

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

76-7505

United States Court of Appeals

FOR THE SECOND CIRCUIT

EMPRESA PUBLICA DE COMERCIALIZACION
DE HARINA Y ACEITE DE PESCADO and
EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS,

Plaintiffs-Appellants,

—against—

BERGEN SHIPPING CO., LTD.,
BREDAS SHIPPING CO., LTD.,

Defendants,

—and—

CONTINENTAL GRAIN COMPANY and
CONTINENTAL GRAIN EXPORT CORPORATION,

Defendants-Appellees.

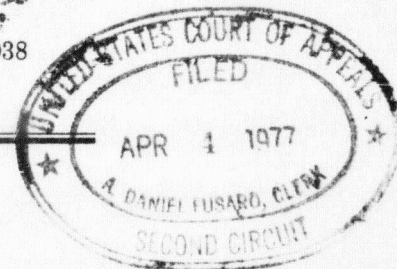
JOINT APPENDIX

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SYMMERS, FISH & WARNER
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PAGINATION AS IN ORIGINAL COPY

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Jury demand date:

75 CIV. 451

D. C. Form No. 106 Rev.

TITLE OF CASE						ATTORNEYS	
208-1	75	4511	09-15-75	3	120	1	4,700, 0862
EMPRESA PUBLICA DE COMERCIALIZACION DE HARINA Y ACEITE DE PESCAZO, and						For plaintiff:	
EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS						Donovan, Donovan, Maloof & Walsh	
						161 William St., N.Y.C. 10038 964	
<p>AS YITOM MART, her engines, boilers, etc.,</p> <p>BERGEN SHIPPING CO., LTD.,</p> <p>BRADA SHIPPING CO., LTD.,</p> <p>CONTINENTAL GRAIN COMPANY, and</p> <p>CONTINENTAL GRAIN EXPORT CORPORATION,</p>							
						For defend. to:	
						Virlin, Campbell & Keating (Bergen)	
						120 E'way., N.Y.C. 10002	
						732-5520	

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.
J.S. 5 mailed	Clerk	SEP 17 1975	57683	
J.S. 6 mailed	Marshal			
Base of Action:	Docket fee			
Adm. lity-Cargo Damage	Witness fees			
Action arose at:	Depositions			

BEST COPY AVAILABLE

PROCEEDINGS

DATE		
09-15-75	1	Filed complaint & issued summons.
10-9-75	2.	Filed stip & order extending debts Bergen Shipping Co. Ltd and Breda Shipping Co. Ltd time to 11-6-75/ Owen, J.
10-3-75	3.	Filed a summons with Mars Hals return. SERVED: BERGEN SHIPPING CO. LTD. 9-16-75 BREDa SHIPPING CO. LTD. 9-16-75 CONTINENTAL GRAIN CO. 9-20-75
10-22-75	4.	Filed stip & Order that the time for the said debt Continental Grain Export Corp. to answer etc, is extended to 11-20-75. Owen, J.
11-12-75	5.	Filed memorandum of debt Continental Grain Company in support of its motion.
11-12-75	5(a)	Filed debt. Continental Grain's motion for a stay. Ret. 12-5-75.
11-12-75	6.	Filed stip & order that the time for debt Bergen Shipping Co. Ltd. to move etc extended to 12-4-75. Owen, J.
11-12-75	7.	Filed stip & order that the time for debt Breda Shipping Co. Ltd. to move etc, is extended to 12-4-75. Owen, J.
11-18-75	8.	Filed stip & order that the time for debts named to appear, etc, is extended to 11-20-75. Owen, J.
11-25-75	9.	Filed Affidavit & Notice of Motion by debt Continental Grain Export Corp. for an order dismissing the complaint etc, as indicated rtble before Owen, J. on 12-5-75.
11-25-75	10.	Filed memo of law by debt Continental Grain Export Corp. in support of said motion etc, as indicated.
12-3-75	11	Filed Order that the debts motion is extended to 12-19-75. Owen, J.
12-3-75	12	Filed stip & order that the debts motion is adjourned to 12-19-75. Owen, J.
12-11-75	13	Filed ANSWER, counterclaim & cross-claims of Debt. (Bergen Shipping Co. Ltd.). KCK
12-11-75	14	Filed ANSWER, counterclaim & cross-claims of Debt. (Breda Shipping Co. Ltd.). KCK
12-18-75	15	Filed Stip & Order adjourning Defts'. (Continental) motion to stay action to 1-8-76. Pltff. must file answering papers by 12-22-75. Defts'. must file reply papers by 1-5-76.....Owen, J.
12-22-75	16	Filed Pltffs'. answer to counterclaim of Debt. (Breda).
12-22-75	17	Filed Pltffs'. answer to counterclaims of Debt. (Bergen).
12-24-75	18	Filed Pltffs'. affidavit in opposition to Defts'. (Continental) motion for a stay.
12-24-75	19	Filed Pltffs'. memorandum of law in opposition to Defts'. (Continental) motion for a stay.
12-30-75	20	Filed Defts'. (Bergen & Breda) affidavit in opposition to Defts'. (Continental) motion for a stay pending arbitration.
01-06-76	21	Filed Stip & Order adjourning Defts'. (Continental) motion for a stay to 1-16-76.....Owen, J.
01-07-76	22	Filed Debt's. (Continental Grain Company) answer to cross-claim of Debt. Breda.
01-07-76	23	Filed Debt's. (Continental Grain Company) answer to cross-claim of Debt. Bergen.
01-07-76	24	Filed Debt's. (Continental Grain Company) interrogs. to Debt. Bergen.
01-09-76	25	Filed Debt's. (Continental Grain Export Corp.) answer to cross-claim of Debt. Breda.
01-09-76	26	Filed Debt's. (Continental Grain Export Corp.) answer to cross-claim of Debt. Bergen.
01-14-76	27	Filed Stip & Order adjourning Defts'. (Continental) motions for a stay to 1-22-76.....Owen, J.
01-20-76	28	Filed Debt's. (Continental Grain Export) reply affidavit in support of motion to dismiss.
01-20-76	29	Filed Debt's. (Continental Grain Export) memorandum of law.
02-25-76	30	Filed Pltff's. affidavit by Orlando Fesca Galdos in opposition to Debt's. (Continental) motion to dismiss.
02-25-76	31	Filed Pltff's. affidavit by Ernesto Velarde Santa Maria in opposition to Debt's. (Continental) motion to dismiss.

DATE	PROCEEDINGS
02-25-76	32 Filed Deft's (Continental) affidavit in opposition to Pltff's. affidavits of Galdos & Santa Maria.
03-16-76	33 Filed Stip & Order extending Deft's. (Bergen) time to answer interrogs. of Co-Deft. (Continental Grain Co.) to 4-1-76.....Owen,J.
05-05-76	34 Filed Stip & Order extending Deft's. (Bergen) time to answer interrogs. of Co-Deft. (Continental Grain Co.) to 5-28-76.....Owen,J.
05-14-76	35 Filed Deft's. (Continental Grain Export) interrogs. to Defts. Bergen & Br
06-05-76	36 Filed Stip & Order extending Deft's. (Bergen) time to respond to Deft's. Continental Grain Co. interrogs. to 6-29-76.....Owen,J.
06-16-76	37 Filed affidavit. Order extending Deft's. (Bergen & Breda) time to answer interrogs. of Deft. Continental Grain Export to 7-14-76.....Owen,J. (Facilely denied)
07-08-76	38 Filed Stip & Order extending Deft's. (Bergen) time to answer interrogs. of Continental Grain Export to 7-14-76.....Owen,J.
07-15-76	39 Filed Defts'. (Bergen & Breda) answers to interrogs. numbered 1 through 1
08-4-76	40 Filed Answers of Defendant, Bergen Shipping co. to interrogs. propounded co-defendant Continental Grain Co.
08-05-76	41 Filed Defts'. (Bergen & Breda) answers to interrogs. number 12 through 38
09-09-76	42 Filed Opinion #45061 - Defts'. motion for a stay of proceedings and trial as to each of them pending arbitration is granted.....Owen,J. (mail
09-17-76	43 Filed Pltffs'. notice of motion for reargument, ret. 10-1-76.
09-17-76	44 Filed Pltffs'. motion for reargument.
09-24-76	45 Filed Deft's. (Continental Grain Company) memorandum in reply to Pltffs'. motion for reargument.
09-30-76	46 Filed Deft Continental Grain memo in response to pltffs motion for reargument,
10-08-76	47 Filed notice of appeal to USCA from order dated 9-8-76 by pltff. <i>Contra</i>
11-30-76	48 Filed memo and on motion dated 9-17-76. Motion denied Lasker J. m'r
12-8-76	49 Filed notice of transmission of record to the USCA
	ALL-TRIAL CONFERENCE HELD BY <i>Y. K. MART</i>

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UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK

-----X
EMPRESA PUBLICA DE COMERCIALIZACION
DE HARINA Y ACEITE DE PESCADO, and
EMPRESA PUBLICA DE SERVICIOS
AGROPECUARIOS,

Plaintiffs.

-against-

COMPLAIN T

SS YUKON MAR T, her engines, boilers, etc.,
BERGEN SHIPPING CO., LTD., BREDA
SHIPPING CO., LTD., CONTINENTAL GRAIN
COMPANY, and CONTINENTAL GRAIN EXPORT
CORPORATION,

Defendants.

-----X
Plaintiffs, by their attorneys, Donovan, Donovan, Maleof &
Walsh, allege upon information and belief as follows:

AS AND FOR A FIRST CAUSE OF
ACTION AGAINST DEFENDANTS,
SS YUKON MAR T, HER ENGINES,
BOILERS, ETC., BERGEN SHIP-
PING CO., LTD., BREDA SHIP-
PING CO., LTD., AND CONTIN-
ENTAL GRAIN COMPANY

FIRST: All and singular the following premises
are true and constitute an admiralty or maritime claim within the meaning
of Rule 9 (h) of the Federal Rules of Civil Procedure and within the
admiralty and maritime jurisdiction of the United States and of this
Honorable Court.

SECOND: At and during all times hereinafter mentioned,
plaintiff, Empresa Publica De Comercializacion De Harina Y Aceite De
Pescado, hereinafter referred to as "EPCHAP", was and now is a public
corporation, incorporated under the laws of the Republic of Peru with a

COMPLAINT

principal office and place of business at Av. 23 de Julio 715, Lima 1, Peru, and plaintiff, Empresa Publica De Servicios Agropecuarios, hereinafter referred to as "EPSA", was and now is a public corporation, incorporated under the laws of the Republic of Peru with a principal office and place of business at Jr. Cahide 805, Piso 7, Jesus Maria, Lima, Peru.

THIRD: At and during all the times hereinafter mentioned, defendants had and now have the legal status and office and place of business stated in Schedule A, and were and now are engaged in business as common carriers of merchandise by water for hire, and owned, operated, managed, chartered and/or otherwise controlled the vessel above named as common carriers of merchandise by water for hire.

FOURTH: At and during all the times hereinafter mentioned, the said vessel was and now is a general ship employed in the common carriage of merchandise by water for hire, and now is or will be during the pendency of this action, within this District and within the jurisdiction of this Honorable Court.

FIFTH: On or about the date and at the port of shipment stated in Schedule A, there was shipped by the shipper therein named and delivered to defendants and the said vessel, as common carriers, the shipment described in Schedule A, then being in good order and condition, and defendants and the said vessel then and there accepted said shipment so shipped and delivered to them, and in consideration of certain agreed freight charges thereupon paid or agreed to be paid, agreed to transport and carry the said shipment to the port of destination stated in Schedule A, and there deliver the same in like good order and condition as when shipped, delivered to and received by them, to the consignee named in Schedule A.

COMPLAINT

SIXTH: Thereafter, the said vessel arrived at the port of destination, where it and defendants made delivery of the said shipment but not in like good order and condition as when shipped, delivered to and received by them, but on the contrary, seriously injured and impaired in value by reason of the matter and things stated in Schedule A, all in violation of defendants' and the said vessel's obligations and duties as common carriers of merchandise by water for hire.

SEVENTH: Plaintiffs were the consignees or owners of the shipment described in Schedule A and bring this action on their own behalf and as agents and trustees on behalf of and for the interest of all parties who may be or become interested in the said shipment, as their respective interests may ultimately appear, and plaintiffs are entitled to maintain this action.

EIGHTH: By reason of the premises, plaintiffs have sustained damages as nearly as the same can now be estimated, no part of which has been paid although duly demanded, in the sum of \$4,700,000.00.

AS AND FOR A SECOND CAUSE
OF ACTION AGAINST DEFENDANT,
CONTINENTAL GRAIN EXPORT
CORPORATION

NINTH: This Court has jurisdiction under the provisions of 28 United States Code §1332 in that the plaintiffs, EPCOMP, and EPSA were and are at and during all the times hereinafter mentioned, public corporations incorporated under the laws of the Republic of Peru, a foreign state, with a principal office and place of business at Av. 28 de Julio 719, Lima 1, Peru; and Jr. Cahulide 805, Piso 7, Jesus Maria, Lima, Peru, respectively; the defendant, Continental Grain Export Corporation is a corporation incorporated under the laws of one of the states of the United States, with an office and place of business at Two

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COMPLAINT

Broadway, New York, New York 10004; and the matter in controversy exceeds the sum or value of ten thousand dollars, exclusive of interest and costs.

TEN TH: That heretofore, on or about the 3rd day of July, 1974, EPSA and defendant, Continental Grain Export Corporation, entered into an agreement wherein and whereby defendant, Continental Grain Export Corporation, agreed, as either principal, agent or assignee to sell to EPSA 25,000 long tons, 5% more or less, of number 3 yellow corn or better with a maximum moisture content of 15.5% to be shipped between July 4th, and 12th, 1974.

ELEVEN TH: EPSA agreed to accept the said shipment of corn and to pay therefor the sum of \$158.20 per metric ton, cost and freight, free out Callao, Peru.

TWELF TH: That thereafter on or about the 15th day of July, 1974, in compliance with the aforesaid contract, the defendant shipped and subsequently delivered to EPSA the said corn which the defendant represented to EPSA to be the kind, character, quality and description hereinabove mentioned, and EPSA accordingly accepted the same and paid therefor to the defendant the sum agreed upon and fully performed all the duties on its part called for by the contract.

THIRTEEN TH: That, in truth and fact, the corn so delivered to EPSA by the defendant was not the kind, character, quality and description hereinabove mentioned, but was wholly of an inferior kind, character, quality and description and in a deteriorated and contaminated condition.

FOURTEEN TH: That at the time of the shipment and acceptance of said corn, EPSA did not know that such corn did not correspond with the description by which it was purchased by EPSA, and EPSA accepted said

corn on an implied warranty and express representation of the defendant that the corn was of the description hereinbefore specified.

FIFTEEN TH: That thereafter, immediately upon discovery thereof, EPSA informed the defendant of the breach of the aforesaid agreement, and the defective, contaminated, inferior kind of corn shipped.

SIXTEEN TH: That had the corn corresponded with the description, kind, character and quality under which EPSA purchased the same at the time and place it should have been delivered to EPSA, it would have been of the value agreed upon in the hereinbefore mentioned contract.

SEVENTEEN TH: EPSA and/or their successors in title by operation of the laws of the Republic of Peru, EPCHAP, have lost large sums of money with additional charges levied for special discharging of the carrying vessel, demurrage for the carrying vessel, on shore storage and other related expenses in addition to the loss sustained through destruction of some of the corn and resale of the remaining corn, all of which were incurred by reason of said breach on the part of the defendant and the inferior corn shipped, and that as a direct result of the foregoing, EPSA and/or their successors in title, EPCHAP, have sustained damages in the sum of \$4,700,000.00, not including interest and costs of suit.

AS AND FOR A THIRD CAUSE OF
ACTION AGAINST DEFENDANT,
CONTINENTAL GRAIN EXPORT
CORPORATION

EIGHTEEN TH: The plaintiffs reallege and reaffirm Paragraphs "NINTH" through "SEVENTEEN TH", inclusive, of this complaint with like effect as if herein fully repeated.

NINETEEN TH: That pursuant to the terms of the hereinbefore mentioned contract between plaintiff, EPSA, and defendant,

COMPLAINT

Continental Grain Export Corporation, the defendant was to arrange and pay for the loading and ocean transportation and carriage of the corn from the United States to Peru.

TWENTY-FIFTH: That in accordance with the terms of the hereinbefore mentioned contract, the defendant, its agent or representative selected the SS YUKON MART as carrying vessel and caused the corn to be loaded thereon.

TWENTY-SIXTH: That before, during and after the loading of the corn on the aforesaid vessel, the defendant had notice or knowledge that the vessel was unseaworthy and/or otherwise unable to sail to destination promptly after loading.

TWENTY-SEVENTH: That the defendant failed to secure a substitute staunch and seaworthy vessel to accomplish the ocean carriage of the corn and the defendant did not advise plaintiffs or otherwise secure their acquiescence to the delay in delivery which would and did result from the failure of the SS YUKON MART to sail to Peru upon completion of loading.

TWENTY-EIGHTH: That notwithstanding the defendant's knowledge of the state of affairs of the carrying vessel, it negotiated the letter of credit and received payment from EPSA for the shipment immediately upon completion of loading of the aforesaid vessel and securing a set of clean on board bills of lading for the shipment of corn.

TWENTY-NINTH: That damage to the corn could and would result from the delay in completion of the voyage was known to the defendant as commercially experienced vendors of corn and other grain products.

TWENTY-TENTH: That as a result of the ensuing delay in completing the ocean voyage, which encompassed a period of 64 days

COMPLAINT

instead of the normal 15 days, the corn was received by EPSA in a seriously deteriorated and contaminated condition and the corn was refused entry into Peru by health authorities of that country.

TWENTY-SIXTH: EPSA and/or their successors in title, EPCHAP, have lost large sums of money through destruction of some of the corn and resale of the remaining corn for re-export with additional sums necessarily expended for special discharging of the carrying vessel, demurrage for the carrying vessel, on shore storage and other related expenses all of which were incurred by reason of said breach on the part of the defendant and that as a direct result of the foregoing, EPSA and/or their successors in title, EPCHAP, have sustained damages in the sum of \$4,700,000.00 not including interest and cost of suit.

WHEREFORE, plaintiffs pray:

1. That process in due form of law may issue against defendants citing them to appear and answer all and singular the matters aforesaid;
2. That if defendants cannot be found within this District, then all their property within this District be attached in the sum of \$4,700,000.00 with interest thereon and costs, the sum sued for in this complaint;
3. That judgment may be entered in favor of plaintiffs against defendants for the amount of plaintiffs' damages, together with interest and costs and the disbursements of this action;
4. That process in due form of law according to the practice of this Court in causes of admiralty and maritime claims may issue against said vessel, her engines, etc., and that all persons having or claiming any interest therein be cited to appear and answer under oath

COMPLAINT

all and singular the matters aforesaid, and that this Court will be pleased to pronounce judgment in favor of the plaintiffs for their damages as aforesaid, with interest, costs and disbursements, and that the said vessel may be condemned and sold to pay therefor; and

5. That this Court will grant to plaintiffs such other and further relief as may be just and proper.

DONOVAN, DONOVAN, MALOOF & WALSH
By:

/s/ David L. Maloof

David L. Maloof, A Member of the Firm
Attorneys for Plaintiffs
Office and P. O. Address
161 William Street
New York, New York 10038

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COMPLAINT

SCHEDULE A

Defendants' Legal Status:

Defendant, Bergen Shipping Co., Ltd., was and now is a foreign corporation or other business entity, with an office and place of business c/o American Bulk Carrier, Inc., 711 Third Avenue, New York, New York 10017.

Defendant, Breda Shipping Co., Ltd., was and now is a foreign corporation or other business entity, with an office and place of business c/o Atlas Navigation Co., Ltd., 301 East 44th Street, New York, New York 10017.

Defendant, Continental Grain Company, was and now is a corporation or other business entity, duly organized and existing under and by virtue of the laws of one of the states of the United States, with an office and place of business at Two Broadway, New York, New York 10004.

Defendant, Continental Grain Export Corporation, was and now is a corporation duly organized and existing under and by virtue of the laws of one of the states of the United States, with an office and place of business at Two Broadway, New York, New York 10004.

<u>Date of Shipment:</u>	July 15th, 1974.
<u>Port of Shipment:</u>	Philadelphia, Pennsylvania.
<u>Port of Destination:</u>	Callao, Peru.
<u>Shipper:</u>	Continental Grain Company.
<u>Consignee:</u>	Empresa Publica De Servicios Agropecuarios.
<u>Description of Shipment:</u>	26,670,000 kilos of #3 Yellow Corn.
<u>Nature of Loss:</u>	Shortage, Damage, Deterioration and Contamination.
<u>Amount Involved:</u>	\$4,700,000.00

COMPLAINT

STATE OF NEW YORK)
) ss:
 COUNTY OF NEW YORK)

DAVID L. MALOOF, being duly sworn, deposes and says:

He is an attorney at law and a partner in the firm of
 Donovan, Donovan, Maloof & Walsh, attorneys for the plaintiffs herein;
 he has read the foregoing Complaint and knows the contents thereof; and
 that the same is true to his own knowledge, except as to the matters
 therein stated to be alleged on information and belief, and as to those
 matters he believes it to be true.

The reason this verification is made by deponent and not
 by plaintiffs is that plaintiffs are foreign corporations, none of whose
 officers are presently available within this district.

The sources of deponent's information and the grounds for
 his belief as to those matters stated in the complaint to be alleged on
 information and belief are documents, records, correspondence and
 memoranda of the plaintiffs in the possession of this deponent.

/s/ David L. Maloof
 DAVID L. MALOOF

Sworn to before me this
 15th day of September, 1975.

/s/

AFFIDAVIT OF MYRON R. LASERSON
ON BEHALF OF CONTINENTAL GRAIN EXPORT
CORPORATION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
75 Civ.4511 (RO)

EMPRESA PUBLICA DE COMERCIALIZACION	:	
DE HARINA Y ACEITE DE PESCADO, and	:	
EMPRESA PUBLICA DE SERVICIOS	:	
AGROPECUARIOS,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	<u>AFFIDAVIT</u>
	:	
SS YUKON MAR, her engines, boilers,	:	
etc., BERGEN SHIPPING CO., LTD., BREDA	:	
SHIPPING CO., LTD., CONTINENTAL GRAIN	:	
COMPANY and CONTINENTAL GRAIN EXPORT	:	
CORPORATION,	:	
	:	
Defendants.	:	

----- x

MYRON R. LASERSON, being duly sworn, deposes and says:

1. I am the Vice President of Continental Grain Export Corporation, the defendant in plaintiffs' second and third cause of action and I make this affidavit in support of defendant, Continental Grain Export Corporation's motion to dismiss the complaint or, in the alternative, to stay the present proceedings pending arbitration.

2. Continental Grain Export Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and place of business at 277 Park Avenue, New York, New York.

3. Defendant, Continental Grain Export Corporation, was the seller of approximately 25,000 tons of #3 yellow corn to plaintiffs.

This corn was sold to plaintiffs pursuant to a

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AFFIDAVIT OF MYRON R. LASERSON ON
BEHALF OF CONTINENTAL GRAIN EXPORT
CORPORATION:

Contract of Sale which is annexed hereto as Exhibit A. The translation of that Contract of Sale is annexed hereto as Exhibit B.

4. The Contract of Sale was executed pursuant to an offer of sale, a copy of the translation of which is annexed hereto as Exhibit C.

5. Addendum #1 to the Contract of Sale provides in relevant part: "it is established under mutual accord that other conditions not specified in our Contract will be governed by the clauses stipulated in Contract Grain & Feed Trade Association No.30 (GAFTA No.30)". . .

The terms and conditions of GAFTA No.30 are annexed hereto as Exhibit D. Clause 31 of GAFTA No.30 provides as follows:

"ARBITRATION-

(a) Any dispute arising out of or under this contract shall be settled by arbitration in London in accordance with the Arbitration Rules of the Grain and Feed Trade Association Limited, No.125, in force at the date of the contract, such Rules forming part of this contract and of which both parties hereto shall be deemed to be cognisant.

(b) Neither party hereto, nor any persons claiming under either of them, shall bring any action or other legal proceeding against the other of them in respect of any such dispute until such dispute shall first have been heard and determined by the arbitrators, umpire or Board of Appeal, as the case may be, in accordance with the Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrators, umpire or Board of Appeal, as the case may

AFFIDAVIT OF MYRON R.
LASERSON ON BEHALF OF
CONTINENTAL GRAIN
EXPORT CORPORATION.

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"be, shall be a condition precedent to the right of either party hereto or of any person claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any dispute."

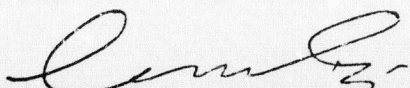
6. The Arbitration Rules (GAFTA No.125), as referred to in the arbitration clause, are annexed hereto as Exhibit E.

7. In the second cause of action, plaintiffs allege that the corn did not meet the specifications in the Contract. Furthermore, in the third cause of action plaintiffs allege that Continental Grain Export Corporation breached its obligation under the Contract in that it failed to provide a seaworthy vessel to transport the goods to destination.

Both causes of action are based upon Continental Grain Export Corporation's obligation under the Contract and, therefore, constitute disputes arising out of or under the Contract of Sale, and as such are referable to arbitration under the aforementioned agreement.

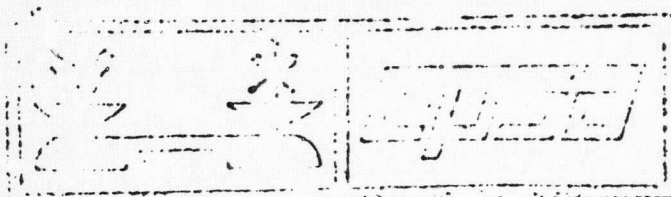
8. Plaintiffs have not at any time asked or demanded of defendant, Continental Grain Export Corporation, that it proceed to arbitrate any alleged claims, dispute or right that they or either of them may have, if any, by reason of the allegations set forth in the complaint, nor has this defendant failed, neglected or refused to proceed to arbitration of any such alleged claims.

Sworn to before me, this
20th day of November, 1975




MYRON R. LASERSON

CASPAR F. EWIG
Notary Public, State of New York
No. 24-600121
Qualified in Kings County
Commission Expires March 30, 1976



17 a

Affidavit of Myron R. Laserson on behalf of
Continental Grain Export Corporation.
Exhibit A

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CAHUIDE 803 9o. PISO TELEFONO 71-1024 (LIMA)

CONTRATO DE CONTRA-VENTA DE 25,000 T.L. 5% MAS O MENOS DE -
MAIZ AMARILLO Nº 3 O MEJOR, HUMEDAD MAXIMA 15.5% QUE CELE -
BRAN LA EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS - EPSA -
Y LA FIRMA CONTINENTAL GRAIN EXPORT CORPORATION .-



Conste por el presente documento el Contrato de Compra-Venta que celebran en su calidad de VENDEDOR la firma CONTINENTAL GRAIN EXPORT CORPORATION representada por BARCO S.A., - con L.T.Nº 9031704 y domicilio en Camaná 851, Lima, representada por el Sr. William Barnett Williams con C.E.Nº2706 y L.T.Nº 2466805 y en su calidad de COMPRADOR, la EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS con L.T.Nº 9947221, representada por su Director Ejecutivo Ing. Manuel Díez Cano con L.E.Nº 5614153 y L.T.Nº26263112 y su Gerente de Importaciones Sr. Fernando Sarmiento M., con L.E.Nº2804471 y L.T.Nº 0518913, de acuerdo a los siguientes términos:

CLAUSULA PRIMERA:- Por el presente Contrato, la firma -
CONTINENTAL GRAIN EXPORT CORPORATION
vende y el COMPRADOR adquiere hasta 25,000 T.L., 5% más o -
menos de Maiz Amarillo Nº 3 ó mejor, 15.5% máximo de hume -
dad según calidad y peso final definitivo al embarque, de -
acuerdo a los certificados otorgados por Inspectores autori -
zados del Ministerio de Agricultura de los Estados Unidos -
de Norteamérica.

CLAUSULA SEGUNDA:- El precio estipulado es de US\$ 153.20
por T.M., Costo y Flete, Free out, Ca
llico.

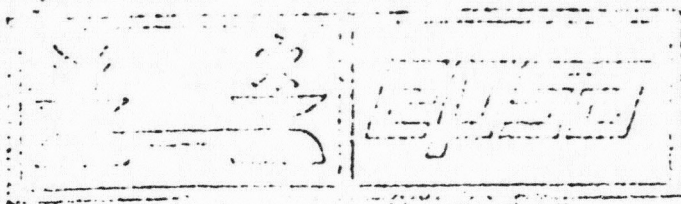
CLAUSULA TERCERA:- El VENDEDOR se obliga a embarcar la -
mercadería entre el 4 y 12 de Julio -
do 1974.

CLAUSULA CUARTA:- El pago se realizará mediante Carta -
de Crédito irrevocable y confirmada, nego



BEST COPY AVAILABLE

//..2



18 a

Affidavit of Myron R. Lāser son on behalf
Continental Grain Export Corporation.
Exhibit A

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CAHUIDE 805 90. PISO TELEFONO 71-1054 (LMA)

Contrato No. 000-74-DEM.

- 2 -

cible y transferible abierto en un Banco de Primera clase en los Estados Unidos de Norteamérica y pagadero a la vista contra la presentación de los siguientes documentos de embarque:

- a) Certificado de Origen, otorgado por las Autoridades correspondientes (1 original y 3 copias).
- b) Conocimiento de embarque, juego completo, limpio a bordo (3 originales y 5 copias) charter parties Bill of Lading.
- c) Factura Consular (originales y 5 copias).
- d) Factura Comercial (originales y 5 copias).
- e) Certificado de Calidad otorgado por Inspectores autorizados del Ministerio de los Estados Unidos.
- f) Certificado de Peso otorgado por entidad oficial en los Estados Unidos.
- g) Certificado Fito-Sanitario otorgado por USA Departamento de Agricultura.
- h) Certificado de Fumigación no mayor de 15 días de antigüedad.



CLAUSULA QUINTA:- Son de cuenta del COMPRADOR:

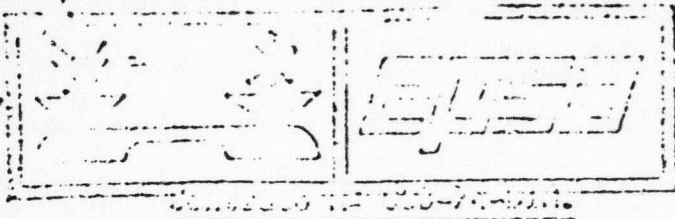
- a) El Seguro Marítimo para el transporte de la mercadería.
- b) Los gastos bancarios de esta operación.
- c) Despatch/Demurrage: 2,000 TL de descarga diaria a un demurrage de US\$ 8,000 por día y/o fracción de día y despatch de US\$ 4,000 por día y/o fracción de día.

Son de cuenta del VENDEDOR:

- a) Los Gastos Consulares.
- b) Los gastos ocasionados por el concurso de precios que han dado origen al presente Contrato.
- c) Los gastos de Fumigación.



//..3



19 a

Affidavit of Myron R. Laserson on behalf
Continental Grain Export Corporation.
Exhibit A

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CAHUIDE 805 90. PISO TELEFONO 71-1084 (LIMA 5)

- 3 -

CLAUSULA SEXTA:-

La oferta de venta tambien forma parte
del presente Contrato.

CLAUSULA SEPTIMA:-

Las partes señalan como domicilio:

El VENDEDOR en:

Jirón Camaná 851 - Lima.

El COMPRADOR en:

Jr. Cahuido 805, Piso 7, Jesús María,
y se someten a los jueces de Lima-Perú, renunciando a cual
quier otro que pudiera favorecerles. Asimismo, hacen renun
cia expresa a cualquier intervención o reclamación diplomá
tica.

El presente Contrato, 003-74-DIM, es suscrito con la firma
CONTINENTAL GRAIN EXPORT CORPORATION, en Lima a los 3 días
del mes de Julio de 1974.

POR EPSA

POR CONTINENTAL GRAIN EXPORT CO.

Ing. Manuel Díaz Cano
Director Ejecutivo

Sr. William Barnett Williams
C.E.Nº 2786
L.T.Nº 2466305

ORIGINAL
Fernando Sarmiento M.
Gerente Comercio Exterior
Inspección

EXHIBIT "A"

Exhibit B - Affidavit of Myron R. Laserson on behalf of Continental Grain Export Corporation.

E P S A

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
Cahuide 805 Lima 6

CONTRACT OF PURCHASE SALE OF 25,000 LONG TONS 5% MORE OR LESS
OF YELLOW CORN No. 3 OR BETTER, MAXIMUM HUMIDITY 15.5% WHICH IS
BOUND BY EMPRESA PUBLICA DE SERVICIOS AGROPECUARIAS - EPSA -
AND THE FIRM OF CONTINENTAL GRAIN EXPORT CORPORATION.

This document confirms the Contract of Purchase Sale which is bound in its capacity of SELLER by the firm of CONTINENTAL GRAIN EXPORT CORPORATION represented by BANCO S.A., with L.T. No. 9081704 and domiciled at Camana 851, Lima, represented by Mr William Barnett William with Electoral Card No. 2786 and L.T. No. 2466805 and in its capacity of BUYER by EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS with L.T. No. 9947221 represented by its Executive Director Eng. Manuel Diaz Cano with L.T. No. 6268112 and Electoral Card No. 5614153 and its Import manager Mr Fernando Sarmiento M., with Electoral Card No. 2804471 and L.T. No. 0516913, in accordance with the following terms:

FIRST CLAUSE: By means of this Contract, the firm of CONTINENTAL GRAIN EXPORT CORPORATION sells and the BUYER acquires up to 25,000 long tons, 5% more or less of Yellow Corn No. 3 or better, 15.5% maximum humidity in accordance with the quality and final definitive weight on loading, in accordance with the certificates issued by the authorized Inspectors of the Department of Agriculture of the United States of America.

SECOND CLAUSE: The stipulated price is US\$158.20 for long ton, Cost and Freight, Free out, Callao.

THIRD CLAUSE: The SELLER accepts the obligation of shipping the merchandise between the 4 and 12 of July 1974.

FOURTH CLAUSE: The payment will be made by means of irrevocable and confirmed, negotiable and transferable Letter of Credit opened in a Bank of first class in the United States of America and payable upon presentation of the following shipping documents:

- a) Certificate of Origin issued by the respective Authorities (1 original and 3 copies);
- * b) Bill of Lading, complete set, clean aboard (3 originals and 5 copies) charter parties Bill of Lading;
- c) Consular Invoice (originals and 5 copies);
- d) Commercial Invoice (originals and 5 copies);
- e) Certificate of Quality issued by the authorized representatives of the Department of the United States;
- f) Certificate of Weight issued by the official entity of the United States;
- g) Plant Health Certificate issued by the USA Department of Agriculture;
- h) Certificate of Fumigation not older than 15 days.

(continued)

Exhibit B - Affidavit of Myron R. Laserson
on behalf of Continental Grain Export Corporation.

FIFTH CLAUSE: Are for the account of the BUYER:

- a) Marine Insurance for the transport of merchandise;
- b) The banking expenses of this operation;
- c) Despatch/Demurrage: 2,000 long tons of daily discharge with the demurrage of US\$8,000 per day and/or fraction of day and despatch of US\$4,000 per day and/or fraction of day.

Are for the account of the SELLER:

- a) The consular expenses;
- b) The expenses caused by the price bidding which was the origin of this Contract.
- c) The cost of Fumigation.

SIXTH CLAUSE: The offer of sale also is part of this Contract.

SEVENTH CLAUSE: The parties indicate as domicile:

The SELLER in:

Jiron Camana 851 - Lima

The BUYER in:

Jr. Cahuide 805, 7th floor, Jesus Maria

and submit themselves to the courts of Lima, waiving any other which may favor them. Likewise, they make express waiver of any diplomatic intervention or claim.

This Contract, 003-74-DIM, is signed with the firm of CONTINENTAL GRAIN EXPORT CORPORATION, on the 3rd day of the month of July of 1974.

For EPSA

(s) Eng. Manuel Diaz Cano
Executive Director

For CONTINENTAL GRAIN EXPORT CO.

(s) William Bennett Williams
Electoral Card No. 2786
L.T. No. 2466805

ORIGINAL SIGNED

Fernando Sarmiento M.
Manager Foreign Trade
Imports

Exhibit B - Affidavit of Myron R. Laserson on behalf of Continental Grain
Export Corporation

E P S A

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS

ADDENDUM No. 1 TO CONTRACT No. 003-74-DIM OF JULY 3, 1974
E.P.S.A./ CONTINENTAL GRAIN EXPORT CORP.

In consideration of the fact that North American Export Grain Association (NAEGA No. 2) covers the acquisitions on the basis FOB and the sale has been made on the basis of "Cost and Freight", it is established under mutual accord that other conditions not specified in our Contract will be governed by the clauses stipulated in Contract Grain and Feed Trade Association No. 30 (GAFTA No. 30), specific for purchases on the basis of "Cost and Freight".

Lima, July 8, 1974

for E.P.S.A.

for CONTINENTAL GRAIN EXPORT CORP.

(s) Fernando Sarmiento Morey
manager foreign Trade

(s) William Barnett Williams
Electoral Card N . 2786
L.T. No. 2466805

2540

Exhibit C - Affidavit of Myron R. Laserson on behalf of Continental
Grain Export Corporation

TRANSLATION

Dear Sirs:

In representation of Continental Grain Export Corporation
we are pleased to make you the following offer:

25,000 Lt 5 Pc more or less buyers option at contract price
No. 3 yellow corn, max humidity 15.5 percent

SHIPMENT: July 4/12 1974 with ETA July 5/6
per vessel Yukon.

PRICE: US Dls 158.20 per metric ton cost
and freight free out Callao.

PAYMENT: By means of letter of credit irrevocable
and confirmed opened immediately in favor
of the sellers.

OTHER CONDITIONS: The quantity condition and quality are final
at shipment according to the bills of
lading and all other conditions will be
in accordance to the contract NAFGA
No. 2

The seller does not guarantee but just for your guidance in
the port of Philadelphia it is usual to load a vessel B/C of
more or less 26,000 MT within 3 days always provided weather permits.

Consular charges for account of sellers:

Elevator certificate no more than 15 days from date of
shipment that the No. 3 yellow corn has been treated with
malathion.

DEMURRAGE DISPATCH: 2000 LT daily discharge with demurrage
US Dls 8000-and dispatch US Dls 4000-
per day.

This offer is valid until 6:45 p.m. Lima time, today
Wednesday 3 of July 1974. We regret being unable to extend
validity in view that tomorrow is a holiday in the United States
of North America.

We remain as always awaiting your esteemed orders, reit-
erating we are

Your Attentive and Faithful Servants

Barco SA
WM Barnett

Effective 2nd September, 1974

Printed in England and issued by

24a

THE GRAIN AND FEED TRADE ASSOCIATION LIMITED

BALTIC EXCHANGE CHAMBERS, 28 ST. MARY AXE, LONDON, EC3A 8EP
(Affiliated to the London Chamber of Commerce)



CONTRACT FOR CANADIAN AND UNITED STATES OF AMERICA GRAIN IN BULK

PARCELS TO CONTINENT

Tain Quito

C.I.F. Terms

No. 30

Copyright

LONDON 19

SELLERS

Intervening as, BROKERS,

BUYERS

have this day entered into a contract on the following terms and conditions.

1. GOODS IN BULK

2. CONVERSION—For the purpose of this contract 2,240 lbs. shall be considered as being equivalent to 1,016 kilos.

3. QUANTITY, including dockage
Sellers shall have the option of shipping a further 3 per cent. more or less on contract quantity, excess or deficiency over the above 2 per cent. shall be settled at the c.i.f. price on date of Bill of Lading, and on the quantity thereof; the value to be fixed by arbitration, unless mutually agreed. In the event of more than one shipment being made, each shipment shall be considered a separate contract, but the margin of the mean quantity sold shall not be affected thereby.

4. PRICE—At

*Delete as applicable.

*per 1,000 kilos } cost, insurance and freight to
*per 2,240 lbs. }

Freight payable on discharge less advances for the ordinary ship's disbursements at Port of Loading or at Sellers' option prepaid in whole or in part.

5. BROKERAGE—contract price to be paid by Sellers on the mean contract quantity, goods lost or not lost, contract fulfilled or not fulfilled, unless such non-fulfilment is due to the successful application of the Prohibition Clause. Brokerage shall be due on the day shipping documents are exchanged or if the goods are not appropriated then the Brokerage shall be due on the 30th consecutive day after the last day for appropriation or advice of shipment.

6. QUALITY—
*Strike out sub-clauses which do not apply.
Buyers shall not be entitled to reject a tender of a higher grade of grain of the same colour and description.

*Official certificate of inspection at time of loading into the ocean carrying vessel shall be final as to quality. On sales of Canadian produce Sellers shall have the option of delivering the Official Canadian Inspection Certificate issued in the United States.
*At time and place of shipment about as per sealed sample marked in the possession of the word "about" shall mean the equivalent of one-half of one per cent. on contract price. Difference in quality shall not entitle Buyers to reject, except under an award of Arbitrators, Umpire or Board of Appeal (as the case may be), referred to in accordance with the Arbitration Rules No. 125. Shipment to be made in good condition but should the grain arrive out of condition, due allowance shall be made for the time of year in which the shipment took place; the fact of the grain so arriving shall not necessarily be sufficient proof of an improper shipment.

7. PERIOD OF SHIPMENT—As per Bill(s) of Lading dated or to be dated the Bill(s) of Lading to be dated when the goods are actually on board. Date of the Bill(s) of Lading shall be accepted as proof of date of shipment in the absence of evidence to the contrary. In any month containing an odd number of days, the middle day shall be accepted as being in both halves of the month. Each shipment appropriated in whole or part fulfilment of this contract shall be considered a separate contract, but each Bill of Lading shall not be considered a separate shipment except as to the date on which it can be appropriated.

8. PORTS OF SHIPMENT—From United States and/or Canadian Port(s), including Lake Ports and Hudson River not above Albany, but excluding Pacific and Hudson Bay Ports.

9. SALES BY NAMED VESSELS—For all sales by named vessels, the following shall apply:—

(a) Position of vessel is mutually agreed between Buyers and Sellers;
(b) The word "now" to be inserted before the word "classified" in the Shipment and Classification Clause (line 47);
(c) Appropriation Clause cancelled if sold "shipped".

10. SHIPMENT AND CLASSIFICATION—Shipment to be made direct or indirect, with transshipment provided that through Bill(s) of Lading are tendered, by first class steamer(s) and/or power engine ship(s) classed not lower than 100 A1 in Lloyd's Register or British Corporation B.S. or top classification of other equal Registers, or ships not inferior to these classifications. In the event of goods shipped in Tankers or in the oil compartments of vessel(s) which are either classified in Lloyd's Register or described in Lloyd's shipping index as "Ore/Oil Vessels" arriving at destination damaged by seawater or otherwise Buyers shall take delivery with an allowance for deterioration (except for country damaged grain) calculated on a percentage based on contract price to be fixed by arbitration in London, according to the Arbitration Rules specified in the Arbitration Clause hereinafter appearing. Slight dry warmth not to be objected to. Samples to be taken and sealed at port of discharge jointly by the Agents of the Shippers, and of the holders of the Bill of Lading or Delivery Order. In the event of a Buyer receiving an allowance from Sellers under this Clause, Seller and Buyer shall give all reasonable assistance to each other in the prosecution of claim for recovery from Shipowners and/or other parties, any such recovery in respect of such allowance made by Seller to Buyer under this Clause to be for the benefit of Seller.

AFFIDAVIT OF MYRON R. LASERSON ON BEHALF OF CONTINENTAL GRAIN EXPORT CORPORATION

11. **EXTENSION OF SHIPMENT**—The period herein specified within which Bills of Lading must be dated shall be deemed to include an additional period not exceeding 8 consecutive days, when so desired by Shippers, provided they give Buyers notice of their intention to claim additional days by telegram, telex or by other method of rapid written communication, sent not later than the business day following the last day included in the originally stipulated period of shipment. Such notice shall be passed on by other Sellers to their Buyers respectively in due course after receipt. Such notice need not state the number of additional days claimed by Sellers and Sellers may ship at any time within the 8 additional days. Sellers, however, shall make an allowance as to Buyers to be deducted in the invoice from the contract price, based on the number of days by which the originally stipulated period is exceeded, as follows: For 1, 2, 3 or 4 additional days, $\frac{1}{2}$ per cent. of the gross c.i.f. price. For 5 or 6 additional days, 1 per cent. of the gross c.i.f. price. For 7 or 8 additional days, $1\frac{1}{2}$ per cent. of the gross c.i.f. price. If, however, after having given notice to Buyers as above, Sellers fail to make shipment within such 8 days, then the contract shall be deemed to have called for shipment during the originally stipulated period plus eight days, at contract price less $1\frac{1}{2}$ per cent. and any settlement for default shall be calculated on that basis. If any allowance becomes due under this clause, the contract price shall be deemed to be the original contract price less the allowance and any other contractual differences shall be settled on the basis of such reduced price.
12. **APPROPRIATION**—
(a) Notice of appropriation stating the vessel's name, port of shipment, date of the Bill(s) of Lading and the approximate quantity loaded shall, within 8 consecutive days from the date of the Bill(s) of Lading be despatched in accordance with sub-clause (e) by or on behalf of the Shipper direct to the first Buyer or to the Representative or Selling Agent or Broker named in the contract. Should the Shipper's notice of appropriation be delayed beyond the said 8 days through any cause beyond his control, the Shipper's Representative or Agent shall pass on the notice to Buyers in due course after receipt but in no case later than 24 hours after receiving the Shipping Documents.
(b) The Notice of appropriation shall, within the period stated in sub-clause (a) be despatched in accordance with sub-clause (e) by or on behalf of each subsequent Seller to his Buyers or to the Representative or Selling Agent or Broker named in the contract, but if Notice of Appropriation is received by a subsequent Seller on or after the period stated in sub-clause (a) from the date of the Bill of Lading, his Notice of Appropriation shall be deemed to be in time if despatched:—
(1) On the same calendar day, if received not later than 1600 hours on any business day.
(2) Not later than the next business day, if received after 1600 hours or on a Non-Business Day.
(c) Buyers, on receiving a notice of appropriation, shall, on demand, give a written receipt therefor, and if required, Sellers shall give to Buyers a copy of the particulars contained in the notice received by them and the time and date of its receipt.
(d) The Shipper's Notice of Appropriation and every subsequent Seller's Notice of Appropriation shall state the date or the presumed date of the Bill of Lading, port of shipment, which shall be for information only and shall not be binding, but in fixing the period laid down by this clause for despatching Notice of Appropriation the actual date of the Bill of Lading shall prevail.
(e) Notice of Appropriation shall be despatched by telegram, telex or other method of rapid written communication, or by letter if delivered by hand on day of writing. Every such Notice of Appropriation shall be open to correction of any errors occurring in transmission, provided that the sender is not responsible for such errors, and for any previous error in transmission which has been repeated in good faith. Should the vessel arrive before receipt of the appropriation and any extra expenses be incurred thereby, such expenses shall be borne by Sellers.
(f) When a valid Notice of Appropriation has been received by Buyers it shall not be withdrawn except with their consent.
(g) A Notice of Appropriation despatched to the Representative or Broker named in the contract shall be considered an appropriation despatched to the Buyers.
(h) An appropriation shall not be deemed invalid if the date of the Bill of Lading is within the contract period and if on that date the vessel named is at the port of loading and carrying goods of the contractual description and quantity.
(i) In the event of less than 95 tons being appropriated on any one vessel, Buyers shall be entitled to a refund of any proved extra expenses for sampling, analysis and lighterage incurred thereby at port of discharge.
13. **PAYMENT**—Payment to be by cash in _____ in exchange for Shipping Documents _____
- If Shipping Documents have not been sighted at time of vessel's arrival at port of discharge, Sellers shall provide other documents (such documents to be countersigned if required by Buyers by a recognised Bank) entitling Buyers to obtain delivery of the goods, and, without prejudice to Buyers' rights under the contract, payment must be made in exchange for same, provided that if such payment be made, proved additional expenses, if any, incurred by reason of such non-sighting of Shipping Documents shall be borne by Sellers and allowed for in final invoice. When payment is due on a Non-Business Day, Buyers shall have the option of taking up the Shipping Documents on the previous business day—payment to be made not later than 12 noon. Should Shipping Documents be presented with an incomplete set of Bill(s) of Lading or should other Shipping Documents be missing, payment shall be made provided that delivery of such missing documents be guaranteed, such guarantee to be countersigned, if required by Buyers, by a recognised Bank. No obviously clerical error in the documents shall entitle the Buyer to reject them or delay payment, but Seller shall be responsible for all loss or expense caused to Buyer by reason of such error, and Seller shall on request of Buyer furnish an approved guarantee in respect thereof.
Dockage to be allowed for at contract price.
Final invoices may be prepared by either party and shall be settled without delay, and if not so settled a dispute shall be deemed to have arisen which may be referred to arbitration as herein provided.
14. **ISSUING DOCUMENTS**—Shipping Documents shall consist of:—1. Invoice. 2. Full set(s) of on board Bill(s) of Lading and/or Ship's Delivery Order(s) and/or other Delivery Order(s) in negotiable and transferable form. Such other Delivery Order(s) if required by Buyers, to be guaranteed by the Ship and/or Owners, their Agents or a recognised Bank. Freight pre-paid bills of lading shall be accepted. 3. Policy(ies) and/or Insurance Certificate(s) and/or Letter(s) of Insurance in the currency of the contract. If required by Buyers Letter(s) of Insurance shall be guaranteed by a recognised Bank, alternatively by any other guarantor who is acceptable to Buyers. 4. Any other documents as called for under the contract. Buyers agree to accept documents containing the Chamber of Shipping War Deviation Clause and/or other recognised official War Risk Clause.
15. **DUTIES, TAXES, LEVIES, ETC.**—All export duties, taxes levies etc. present or future, in country of origin shall be for Sellers' account. All import duties, taxes, levies, etc. present or future, in country of destination, shall be for Buyers' account, unless otherwise provided.
16. **DISCHARGE**—The vessel shall be discharged in accordance with the conditions of the Bill(s) of Lading in force with regular lines to port of discharge, but if ordered to a port to which there is not a regular line, discharge shall be as fast as the vessel can deliver according to the custom of the port. If documents are tendered which do not provide for discharging as above or contain contrary stipulations as to discharge and/or demurrage, of the port, if documents are tendered which do not provide for discharging as above or contain contrary stipulations as to discharge and/or demurrage, Sellers shall be responsible to Buyers for all extra expenses incurred thereby. Unless otherwise provided, the cost of discharge from hold to ship's rail shall be for Sellers' account, from ship's rail overboard for Buyers' account. Discharge by grab(s) shall be permitted unless specifically excluded at the time of contract.

CONTRACT FOR CANADIAN AND UNITED STATES OF AMERICA GRAIN IN BULK

No. 30



PARCELS TO CONTINENT

Tale Quota

C.I.F. Terms

19

We acknowledge the receipt of your contract No. _____ dated _____ { for purchase from us
of _____ sale to us
To _____ which we confirm.

Signed

THE GRAIN AND FEED TRADE ASSOCIATION LIMITED

CHARLES & Co., Ltd. LONDON.

EXHIBIT "D"

17. **WEIGHING**—The whole shipment shall be weighed at time of discharge. Sellers and Buyers shall have the right of supervision both as to weighing and delivery. Any deficiency on the Bill of Lading weight shall be paid for by Sellers, and any excess over Bill of Lading weight shall be paid for by Buyers at contract price unless the Pro Rata Clause applies. No payment shall be made for increase in weight occasioned by water and/or oil during the voyage. In case of Sea Accident causing a deficiency on Invoice weight, Provisional Invoice quantity shall be final, except when such deficiency cannot be accounted for by the nature of the accident, and is not recoverable from Underwriters. If discharge is carried out by grab, the method of determining the weight shall be mutually agreed between Buyers and Sellers and/or their respective agents.
18. **SAMPLING**—Samples, if required, shall be taken at time of discharge in accordance with the appropriate Rules of the Grain and Feed Trade Association Limited and shall be the only samples used for the purposes of arbitration.
19. **PRO RATA**—
- (a) Should any of the above mentioned quantity form part of a larger quantity of the same or a different period of shipment of bags of the same mark, or of a similar quality, whether in bags or bulk or whether destined to more than one port, no separation or distinction shall be necessary.
- (b) All loose collected, damaged goods and sweepings shall be shared by and apportioned pro-rata in kind between the various receivers thereof at the port of discharge named in the contract, buying under contracts containing this clause. In the event of this not being practicable or any of them receiving more or less than his pro-rata share of apportionment, he shall settle with the other(s) on a pro-rata basis in cash at the market price and each receiver shall bear his proportion of the depreciation in market value. The pro-rata statement shall be established by the Sellers or their representatives in conjunction with the receivers or their representatives.
- (c) The above pro-rata apportionment between receivers shall have no bearing on the establishment of final invoices with Sellers and for the purpose of these final invoices, the total quantity of loose collected, damaged goods and sweepings shall be regarded as delivered to those receivers who did not receive their full invoiced quantity.
- (d) In the case of excess or deficiency, the difference between the invoiced and the total delivered quantity shall be settled at the market price by final invoices to be rendered by receivers, who have received more or less than that paid for, to their immediate Sellers without taking into consideration the above pro-rata apportionment between receivers.
- (e) If an excess quantity is delivered to one or more receiver and a deficient quantity is delivered to one or more receiver, the excess and deficiency shall be settled between them at the market price. Final invoices shall be established with immediate Sellers for any balance resulting from this settlement.
- (f) All Sellers and Buyers of any part of such larger quantity as aforesaid under the contracts containing this clause shall be deemed to have entered into mutual agreements with one another to the above effect and to agree to submit to arbitration all questions and claims between them or any of them in regard to the execution of this clause as aforesaid in accordance with the Arbitration Clause of this contract. Sellers and Buyers shall give all reasonable assistance in execution of this clause. All Sellers shall be responsible for the settlement by their respective Buyers in accordance with this clause within a reasonable time.
- (g) The market price wherever mentioned in this clause shall be the market price on the last day of discharge of the vessel in the port of destination, such price to be fixed by arbitration unless mutually agreed.
- (h) In the event of this Clause being brought into operation, any allowances payable in respect of condition, or quality, or under any of the other guarantees contained in this contract, shall be based upon the actual weight received by the Buyer and not on the pro-rata weight.
- (j) In the event of any conflict in terms the method of apportionment applicable to the port of discharge published by GAFTA, shall, where applicable, take precedence over sub-clauses (b) to (h) above.
20. **LATENT DEFECT**—The grain is not warranted free from defect, rendering the same unmerchantable, which would not be apparent on reasonable examination, any statute or rule of law to the contrary notwithstanding.
21. **INSURANCE**—Sellers shall provide insurance (for original and for increased value, if any) on the goods for not less than 2 per cent. over the invoice amount, any amount over 2 per cent. to be for Sellers' account in case of total loss only, and if and when called upon for the purpose of claiming upon Underwriters, shall give a letter certifying that there are no other insurances effected by them or by holders antecedent to them. Insurance on Lloyd's conditions which shall include such Grain and Feed Trade Association's War Risk and Strike Risk Clauses as may be in force at time of shipment and the Grain and Feed Trade Association's F.P.A. (North Atlantic) Clause and, if applicable, the Liverpool Craft Risk Clause, to be effected (at Sellers' option) with approved British and/or Canadian and/or U.S.A. and/or Continental Underwriters and/or Companies carrying on business in England, or who for the purpose of any legal proceedings accept a British domicile and provide an address for service of process in London, but for whose solvency Sellers are not to be responsible. Claims to be paid in the currency of the contract. Any expense for covering the Grain and Feed Trade Association's War Risk and Strike Risk exceeding one-half of one per cent. to be for account of Buyers. The rate of such insurance not to exceed the rate ruling in London on the date of the Bill(s) of Lading or date of steamer's sailing, whichever may be adopted by Underwriters. Claims for excess premium shall be rendered, wherever possible, with the Provisional Invoice, but in no case later than the date of the vessel's arrival, otherwise any such claim shall be void. In the event of a Certificate of Insurance being supplied, it is agreed that such Certificate shall be exchanged by Sellers for a duly stamped Policy if and when required, and such Certificate shall state on its face that it is so exchangeable. Policies and/or Certificates of Insurance to cover the risks under the Canadian and/or the United States Sea Carriage of Goods Act as per Clause 22. Any general average prior to date of contract shall be for Sellers' account. Buyers in such case to furnish Sellers after final discharge of vessel, with the usual documents required by Average Adjusters for preparation of Average Statement, and to return to Sellers the Policy(ies) and/or Certificate for any increase in c.i.f. value, should such have occurred, failing which Buyers shall pay such contribution to Average thereon as Sellers may be unable to recover in consequence.
22. **CANADIAN AND UNITED STATES ACTS**—The assured is held covered against: "loss or damage arising or resulting from act, neglect, or default of the master, manner, pilot or the servants of the carrier in the navigation or in the management of the vessel" for which the "carrier" or "vessel" is relieved of responsibility under Article IV, Section 2 of the Rules appended to the Water Carriage of Goods Act 1936 of Canada, and/or Section 3 of the Act of Congress of the United States, approved 13th February 1893, and/or Section 4, sub-section 2, of the Carriage of Goods by Sea Act 1936 of the United States of America, but nothing contained in this clause shall limit or affect any rights which Underwriters may have by subrogation or otherwise against the owners of the said vessel. Claims arising under this clause are not subject to the F.P.A. warranty.
23. **PROHIBITION**—In case of prohibition of export, blockade or hostilities or in case of any executive or legislative act done by or on behalf of the Government of the country of origin or of the territory where the port(s) of shipment named herein is/are situate, preventing fulfilment, this contract or any unfulfilled portion thereof so affected shall be cancelled. In the event of shipment proving impossible during the contract period by reason of any of the causes enumerated herein, Sellers shall advise Buyers without delay with the reason therefor. If required, Sellers must produce proof to justify their claim for cancellation.

AFFIDAVIT OF MYRON R. LASERSON ON BEHALF OF CONTINENTAL GRAIN EXPORT CORPORATION

- 24. STRIKES—**
1. Should shipment of the goods or any part thereof be prevented at any time during the last 28 days of guaranteed time of shipment, or at any time during guaranteed contract period if such be less than 28 days, by reason of riots, strikes or lock-outs at port(s) of loading or elsewhere preventing the forwarding of the goods to such port(s) or by reason of riots, strikes or lock-outs in the Great Lakes or the St. Lawrence River preventing the proceeding of the vessel(s) to the Great Lakes or St. Lawrence port(s) of loading, then Shippers shall be entitled at the resumption of work after the termination of such riots, strikes or lock-outs to such time, not exceeding 28 days, for shipment from such port(s) as was left for shipment under the contract prior to the outbreak of the riots, strikes or lock-outs and in the event of the time left for shipment under the contract being 14 days or less, a minimum of 14 days shall be allowed. In the event of further riots, strikes or lock-outs occurring during the time by which the guaranteed time of shipment has been extended by reason of the operation of the provisions of the foregoing paragraph, the additional extension shall be limited to the actual duration of such further riots, strikes or lock-outs. In case of non-shipment under the above circumstances, and if Shippers have claimed an extension under paragraph 2 of this clause, the date of default shall be similarly deferred.
 2. Shippers shall send notice by cable or telex not later than 2 business days after the last day of guaranteed time of shipment if they intend to claim an extension of time for shipment under paragraph 1. Such notice shall state the port(s) from which shipment was intended to be made and if such extension is claimed the shipment, after expiry of contract period, shall only be made from such port(s). All such notices shall be passed on in due course.
 3. If the Shippers give the notice referred to above, they shall forthwith apply to the North American Export Grain Association and request them to cable or telex to the Grain and Feed Trade Association Limited confirming the existence of such riots, strikes, or lock-outs and in due course to cable or telex the dates of commencement and resumption of work after termination thereof. The Shippers further agree to comply with all requirements of the North American Export Grain Association to ensure such information is sent.
 4. As soon as practicable, a certificate of the North American Export Grain Association confirming the information as per paragraph 3 above and certifying the effective duration of the riots, strikes or lock-outs causing the delay and/or prevention of shipment shall be despatched to the Grain and Feed Trade Association Limited. This certificate or (failing its receipt by the Grain and Feed Trade Association Limited at time of negotiation of documents) the above-mentioned communications shall be deemed to be final evidence of such riots, strikes or lock-outs on all contracts where Shippers have claimed extension as per paragraph 2 above.
- 25. NOTICES—**Any Notices received after 1600 hours on a business day shall be deemed to have been received on the business day following. A Notice to the Broker or Agent shall be deemed a Notice under this contract. All Notices given under this contract shall be given by letter, if delivered by hand on the day of writing, or by telegram or by telex or by other method of rapid written communication. In case of resales all Notices shall be passed on without delay by Buyers to their Respective Sellers or vice versa.
- 26. NON-BUSINESS DAYS—**Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any days which the Grain and Feed Trade Association Limited may declare as Non-Business Days for specific purposes, shall be Non-Business Days. Should the time limit for doing any act or giving any notice expire on a Non-Business Day, the time so limited shall be extended until the first Business Day thereafter. The period of shipment shall not be affected by this clause.
- 27. DEFAULT—**In default of fulfilment of contract by either party, the other, at his discretion, shall, after giving notice by letter, telegram or telex, have the right to sell or purchase as the case may be, against the defaulter and the defaulter shall make good the loss, if any, on such purchase or sale on demand. If the party liable to pay be dissatisfied with the price of such sale or purchase or if the above right is not exercised and damages cannot be mutually agreed, any damages, payable by the party in default shall be settled by arbitration. In the event of default, by either party entitling the other party to damages, such damages shall be based upon the actual or estimated value of the goods on date of default, to be fixed by arbitration unless mutually agreed, but nothing contained in or implied under this contract shall entitle Buyers to recover any damages in respect of loss of profit upon any sub-contracts made by themselves or others unless the Arbitrators, or Board of Appeal, having regard to any special circumstances, shall in their sole and absolute discretion award such damages. In the event of default in shipment or delivery, damages, if any, shall be computed upon the mean contract quantity.
- Default may be declared by Seller at any time after expiry of the contract period, and the default date shall then be the first business day after the date of Seller's advice to his Buyer. If default has not already been declared then notwithstanding the provisions stated in sub-clause (b) of the Appropriation Clause, if a notice of appropriation is not passed by the 10th consecutive day after the last day for appropriation laid down in the contract, the Seller shall be deemed to be in default and the default date shall then be the first business day thereafter.
- 28. CIRCLE—**Where a Seller repurchases from his Buyer or from any subsequent Buyer the same goods or part thereof, a circle shall be considered to exist as regards the particular goods so repurchased, and the provision of the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the same description, from the same country of origin, of the same quality, and, where applicable, of the same analysis warranty, for shipment to the same port(s) of destination during the same period of shipment).
- Subject to the terms of the Prohibition Clause in the contract, if the goods are not appropriated, or, having been appropriated documents are not presented, invoices based on the mean contract quantity shall be settled between each Buyer and his Seller in the circle by payment by each Buyer to his Seller of the excess of the Seller's invoice amount over the lowest invoice amount in the circle. Such settlement shall be due for payment not later than 15 consecutive days after the last day for appropriation, or, should the circle not be established before the expiry of this time then settlement shall be due for payment not later than 7 days after the circle is established. All Sellers and Buyers shall give every assistance to the establishment of the circle and when a circle shall have been established same shall be binding on all parties to the circle.
- Should any party in the circle commit any act comprehended in the Insolvency Clause of his contract, the circle shall be considered to be broken, and the Insolvency Clause shall apply.
- 29. INSOLVENCY—**If before the fulfilment of this contract, either party shall suspend payments, commit an act of bankruptcy, notify any of his creditors that he is unable to meet debts or that he has suspended or that he is about to suspend payment of his debts, convene, call or hold a meeting of creditors, convene, call or hold a meeting to go into liquidation (other than for reconstruction or amalgamation) or shall apply for an official moratorium, have a petition presented for winding up, or shall have a Receiver appointed, the contract shall forthwith be closed, either at the market price then current for similar goods, or at the option of the other party, at a price to be ascertained by repurchase or re-sale, and the difference between the contract price and the closing price shall be the amount payable or receivable under this contract.
- 30. DOMICILE—**Buyers and Sellers agree that, for the purpose of proceedings either legal or by arbitration, this contract shall be deemed to have been made in England, and to be performed there, any correspondence in reference to the offer, the acceptance, the place of payment, or otherwise notwithstanding, and the Courts of England or arbitrators appointed in England, as the case may be, shall, except for the purpose of enforcing any award made in pursuance of the Arbitration Clause hereof, have exclusive jurisdiction over all disputes which may arise under this contract. Such disputes shall be settled according to the law of England, whatever the domicile, residence or place of business of the parties to this contract may be or become. Any party to this contract residing or carrying on business elsewhere than in England or Wales, shall for the purpose of proceedings at law or in arbitration be considered as ordinarily resident or carrying on business at the offices of the Grain and Feed Trade Association Limited and if in Scotland he shall be held to have prorogated jurisdiction against himself to the English Courts; or if in Ireland to have submitted to the jurisdiction, and to be bound by the decision of the English Courts. The service of proceedings upon any such party by leaving the same at the office of the Grain and Feed Trade Association Limited together with the posting of a copy of such proceedings to his address abroad, or in Scotland or in Ireland, shall be deemed good service, any rule of law or equity to the contrary notwithstanding. Where goods forming the subject of this contract are not for consumption in Great Britain or Northern Ireland nothing in the foregoing shall make the sale subject to the provisions of the Agriculture Act for the time being in force.
- 31. ARBITRATION—**
- (a) Any dispute arising out of or under this contract shall be settled by arbitration in London in accordance with the Arbitration Rules of the Grain and Feed Trade Association Limited, No. 125, in force at the date of the contract, such Rules forming part of this contract and of which both parties hereto shall be deemed to be cognisant.
 - (b) Neither party hereto, nor any persons claiming under either of them, shall bring any action or other legal proceedings against the other of them in respect of any such dispute until such dispute shall first have been heard and determined by the arbitrators, umpire or Board of Appeal, as the case may be, in accordance with the Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrators, umpire or Board of Appeal, as the case may be, shall be a condition precedent to the right of either party hereto or of any person claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any dispute.
- 32. UNLAWFUL CLAUSE—**The Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967, shall not apply to this contract.

Exhibit D

Exhibit E - Affidavit of Myron R. Laserson on behalf of Continental Grain
Export Corporation

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Effective 1st October, 1974

THE GRAIN AND FEED TRADE ASSOCIATION
LIMITED



No. 125

Copyright

ARBITRATION RULES

PRELIMINARY

- 1.—(a) Any dispute arising out of a contract embodying these Rules (including any question of law arising in connection therewith) shall be referred to arbitration in London. Each party shall appoint an arbitrator and such arbitrators shall have the power, if and when they disagree, to appoint an umpire whose decision is to be final (subject only to appeal as hereinafter provided).
- (b) An arbitrator or an umpire appointed under these Rules shall either be a Member of the Association, or with the consent of his principals, an employee of a Member, but in either case he shall be a person engaged or who has been engaged in the trade and shall not be interested in the transaction nor directly interested as a member of a firm or a company named as a party to the arbitration.
- (c) An appointment shall be valid if the arbitrator has indicated his acceptance of the appointment and the claim has been despatched to the other party within the time limits laid down in these Rules.

APPOINTMENT OF ARBITRATORS/UMPIRES

- 2.—(a) Each party may appoint an arbitrator as provided in Rule 1.
- (b) Any party requiring an arbitrator to be appointed on his behalf may apply to the Association within the time limits stipulated in Rule 3. Any two of the Officers may, in their discretion, appoint an arbitrator to act for the party applying, provided that such application is addressed in writing to the Secretary and provided that a copy has been despatched to the other party within the time limit laid down in Rule 3. Such appointment shall, for the purposes of any time limit provided by these Rules be equivalent to the appointment of an arbitrator by the applicant.
- (c) If one party has appointed his arbitrator, despatched notice in writing of the appointment to the other party and called upon that party to appoint his arbitrator, and the party fails to comply within nine consecutive days of the notice being served (such notice to be despatched in accordance with Rule 3) then, either party may apply to the Association for the appointment of an arbitrator, to act on behalf of the party who has failed to appoint. Provided that the application is accompanied by evidence that (i) the parties had, prima facie, entered into a contract subject to these Rules, (ii) notice was despatched to the other party that arbitration was claimed and (iii) notice was despatched that application was being made to the Association for the appointment of an arbitrator, and the appropriate fee ruling at the date of application has been paid, any two of the Officers shall appoint an arbitrator to act on behalf of the party who failed to appoint an arbitrator to act on his behalf.
- (d) Any party making an application to the Association for the appointment of an arbitrator in accordance with Rule 2 (c) may be required by the Association to pay a deposit of such sum as the Association may require on account of any fees and expenses thereafter arising if the arbitrators or an umpire should decide that under the provisions of Rule 4 they have no jurisdiction.

- (e) If an arbitrator dies or refuses to act or becomes incapable of acting or fails to proceed with the arbitration and a substitute is not appointed by the party for whom he was acting within five consecutive days after notice of such death, refusal, incapacity, or failure as the case may be, any two of the Officers shall have the power to appoint an arbitrator, provided that application is made in accordance with the second sentence of Rule 2(c).
- (f) If the arbitrators appointed fail to agree on the appointment of an umpire, any two of the Officers shall at the request of either arbitrator have the power to appoint an umpire, on payment of the appropriate fee ruling at the date of application.

All persons appointed under the provisions of this Rule shall be qualified to act as defined in Rule 1.

PROCEDURE FOR CLAIMING ARBITRATION AND TIME LIMITS

3.—(a) General

Notice of the intention to proceed to arbitration shall be despatched and an arbitrator appointed in writing by the party claiming arbitration as stated below, which notice shall be valid if passed on by the intermediate parties without undue delay.

(b) Technical

- (i) Within 90 consecutive days of the expiry of the contract time of shipment or of the date of completion of final discharge of the ship at port of destination, whichever period shall last expire.
- (ii) In respect of final invoices within 24 consecutive days of the dispute having arisen.

(c) Grain, Pulses and Cereal Products

Contracts numbers: 2, 3, 5, 7, 11, 11a, 12, 13, 14, 14a, 16, 19, 26, 27, 28, 30, 31, 32, 35, 36, 41, 43, 48, 49, 50, 51, 53, 54a, 59, 60, 61, 62, 64, 74, 74a, 75, 77, 79, 79a, 80, 84, 85.

Quality

- (i) When the sale has been a sale by sample, within 14 consecutive days of the date of completion of final discharge of ship at port of destination.
- (ii) When the sale has been of fair average quality, to be assessed upon the basis of and by comparison with the Association's official F.A.Q. Standard of the month in which the Bill of Lading is dated, within 14 consecutive days of the publication in the Trade Lists that the Standard has been, or will not be, made.
- (iii) When the sale has been of fair average quality against a Standard which is officially adopted by the Association, within 14 consecutive days of the completion of final discharge of the ship at port of destination or within 14 consecutive days of the publication in the Trade Lists that the Standard has been, or will not be, adopted, whichever period shall last expire.

(d) Condition

Where the goods have been bought and sold on terms known as "Rye Terms", within 10 consecutive days of the date of completion of final discharge of the ship at port of destination.

(e) Protein Feeding Stuffs

Contracts numbers: 1, 4, 6, 8, 9, 10, 15, 17, 22, 100, 101, 102, 103, 104, 105, 106, 107, 108, 116, 119.

Quality and/or Condition

- (i) In respect of quality and/or condition, not later than 24 consecutive days after final discharge of the vessel declared against the contract. (Except for Rye Terms in which case the time shall be 10 consecutive days.)
- (ii) In respect of the quality and/or condition of goods sold otherwise than for shipment, within 28 consecutive days after the date of delivery.

EXHIBIT "B"

Exhibit D - Affidavit of Myron R. Laserson on behalf of Continental Grain
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(f) Finality

Every arbitration claimed in accordance with these rules must be proceeded with, if for—

- Quality. (i) When the sale has been a sale by sample, within 28 consecutive days of the date of completion of final discharge of the ship at port of destination.
- (ii) When the sale has been of fair average quality or by description in respect of *Grains, Pulses and Cereal Products* (Contracts listed clause No. 3 (c) within 28 consecutive days of the publication in the Trade Lists that the Standard has been, or will not be, adopted or made, or within 28 consecutive days of the completion of final discharge of ship at port of destination which ever period shall last expire.
- (iii) When the sale has been of fair average quality, in respect of *Protein Feeding Stuffs* (Contracts listed clause No. 3 (e)) within 60 consecutive days of the date of appointment of an arbitrator by or on behalf of the party against whom arbitration has been claimed.
- Condition. (iv) Where the goods have been bought or sold on terms known as "Rye Terms", within 21 consecutive days of the date of completion of final discharge of the ship at port of destination.

In the event of non-compliance with any of the preceding provisions of this Rule, claims shall be deemed to be waived and absolutely barred, unless the Arbitrators, Umpire or Board of Appeal referred to in these Rules, shall, in their absolute discretion, otherwise determine.

PROCEDURE FOR ARBITRATIONS

4.—In the event of a contract forming part of a string of contracts which are in all material points identical in terms, except as to price, any arbitration for quality and or condition shall be held as between the first seller and the last buyer in the string as though they were contracting parties, provided that every party against whom arbitration is claimed and who claims to be in a string shall have supplied his contract and all relevant information to the arbitrators, and any award so made (hereinafter referred to as a string award) shall, subject to the right of appeal, except an award in respect of condition where the goods have been bought and sold on terms known as "Rye Terms", be binding on all intermediate parties in the string, and may be enforced by any intermediate party against his immediate contracting party as though a separate award had been made under each contract.

- 5.—(a) An arbitrator or an umpire appointed in accordance with the provisions of Rule 2(c) of these Rules may decide in his absolute discretion at any time after the appointment and prior to making an award, that, having regard to the nature of the dispute between any of the parties, such dispute is not one arising out of a contract embodying these Rules, and that in consequence he has no jurisdiction under these Rules to arbitrate thereon.
- (b) In the event of an arbitrator or an umpire deciding that he has no jurisdiction as in Rule 5(a) aforesaid he shall forthwith certify in writing to this effect and forthwith notify the parties to the dispute and the Association in writing of his decision and thereupon the dispute shall be deemed to be one which is not subject to the Arbitration Rules of the Association and accordingly such Rules shall not apply thereto.
- (c) The decision of an arbitrator or umpire appointed in accordance with the provisions of Rule 2(c) of these Rules and made pursuant to Rule 5(a), thereof shall be final and binding upon the parties and upon the Association and it shall not be subject to any right of appeal to the Committee of Appeal save when made by consent of all the parties who shall notify the Association in writing not later than 28 consecutive days after the date of the said decision of their intention to appeal against such decision (hereinafter referred to as the preliminary issue).
- (d) Upon being notified as aforesaid the appropriate Committee of Appeal shall elect a Board of Appeal to determine the preliminary issue.
- (e) The Board of Appeal may in its absolute discretion lay down the procedure to be adopted at the determination of the preliminary issue and may order the parties to the dispute to lodge with the Association within a specified time such fees as the Board of Appeal considers reasonable as a condition of the determination of the preliminary issue.
- (f) The Board of Appeal shall either uphold or reverse the decision of the arbitrator or umpire on the preliminary issue.
- (g) In the event of the Board of Appeal upholding the arbitrator or umpire on a preliminary issue, the Board of Appeal shall certify accordingly and shall notify all parties, the arbitrators, the umpire and the Association that the dispute is deemed to be one which is not subject to these Rules and accordingly that such Rules shall not apply thereto.
- (h) In the event of the Board of Appeal reversing the decision of the arbitrator or umpire on a preliminary issue, the Board of Appeal shall certify accordingly and shall notify all parties, the arbitrators, the umpire and the Association and shall

order that the dispute be remitted to arbitration afresh whereupon:—

- (i) the dispute shall be deemed to be one arising out of a contract embodying these Rules.
 - (ii) the arbitrators and umpire who were formerly appointed shall thereupon cease to act.
 - (iii) the Board of Appeal may in its absolute discretion extend the time under Rule 5(c).
- Provided that:—
- (iv) no arbitrator or umpire previously appointed under the provisions of Rule 2(c) of these Rules to determine such dispute shall be re-appointed when the dispute is remitted as aforesaid.
 - (v) no objection shall be taken under Rule 3 that time has expired if the requirements of Rule 3 were previously validly complied with.
 - (vi) the Board of Appeal may in its absolute discretion extend the time under Rule 3.
- (f) The Board of Appeal shall have absolute discretion to make such order by way of costs in respect of the preliminary issue as it deems just and equitable.
 - (g) The decision of the Board of Appeal on the preliminary issue shall be conclusive and binding upon the parties and upon any subsequent Board of Appeal to which the arbitration award may be referred under these Rules.
 - (h) The determination of the preliminary issue shall not preclude a subsequent appeal under these Rules as hereinafter provided, save that no Member of the Board of Appeal which determined the preliminary issue shall be eligible to vote for or serve on a Board of Appeal which subsequently determines the appeal against the award of arbitration in that dispute.

AWARDS OF ARBITRATION

- 6.—(a) All awards of arbitration by arbitrators or an umpire shall be in writing on an official form issued by the Secretary, and the arbitrators or umpire shall have the power to award the costs of and connected with the reference, and may assess their fees. The Association's fees shall be those for the time being in force as prescribed by the Council.
- (b) The arbitrators or umpire, on the application of either party before the arbitration award is signed, shall have the power to extend the time for appealing in any case in which they or he consider it just or necessary so to do. Any such extension must be stated in the award of arbitration.
- (c) Upon the signing of an award of arbitration it shall be the duty of the arbitrators or the umpire to lodge it with not less than two official copies with the Secretary. The Secretary shall date the award and the copies and shall either (i) issue the award to the party who claimed arbitration, who shall within a specified number of days pay the fees and expenses, and send copies to the other parties, or (ii) give notice to the parties named in the award that the award is at their disposal upon payment of the fees and expenses to the Association.
- (d) If an award is not paid for in accordance with either Rule 6(c)(i) or Rule 6(c)(ii) within twenty-one consecutive days after the date of the award, the Secretary may call upon any of the principals named to take up the award, and in such case the party so called upon shall pay the fees and expenses as directed.
- (e) Awards of arbitration (subject to the right of appeal hereinafter mentioned) shall be conclusive and binding on the parties, both with respect to the matter in dispute and all expenses of and incidental to the reference and award.

APPEALS

- 7.—No appeal shall be allowed on awards for condition where the goods have been sold on terms "Guaranteed sound on arrival and/or Rye Terms."
- 8.—(a) If any party, except as provided in Rule 7 above, be dissatisfied with an arbitration award, a right of appeal shall lie to a Board of Appeal to be elected in accordance with the Rules and Regulations of the Association in force at the time of the contract and provided that the following conditions are complied with, but not otherwise:—

Exhibit E - Affidavit of Myron R. Laserson on behalf of Continental Grain
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- (i) The appellant shall give written notice of appeal to the Secretary accompanied by a copy of the notice which is required by Clause 8(j)(ii) of this Rule to be sent by him to the other party to the arbitration award, and (subject to the provisions of Rule 10) payment to the Association of the appeal fee stated on the arbitration award.
- (ii) The appellant's notice of appeal (except in the event stated in Rule 10) and the remittance in respect of the fee shall reach the Secretary not later than 12 noon on the 30th consecutive day after the date of the arbitration award. (The Notices Clause in the contract shall not apply.)
- (iii) The appellant, when giving notice of appeal, shall also despatch written notice thereof to the other party.
- (iv) The appellant shall proceed with his appeal with due despatch.
- (v) The total fees and expenses of the arbitration award shall be paid before the appeal is heard.
- (vi) In cases of appeals lodged by more than one party in relation to the same award any two of the Officers shall have the power to consolidate such appeals for hearing by the same Board of Appeal.
- (b) The appellant shall pay such further sum or sums on account of fees, costs and expenses as may be called for by the Association prior to the publication of the award by the Board of Appeal.
- (c) If the appellant, on receiving from the Board of Appeal notice of the date fixed for the hearing of the appeal, requests a postponement of more than 14 days or at the first or any subsequent hearing of the appeal requests an adjournment, or if either party requests a Special Case to be stated for the opinion of the Court, then in such event the Board of Appeal may in their absolute discretion direct that as a condition of granting an adjournment or stating their Award in the form of a Special Case (as the case may be) all or any part of the money required by the terms of the arbitrators' award to be paid by either party to the other shall be deposited in a bank (either in England or abroad) as the Board of Appeal may direct. Such money shall be held by such bank in an account in the name of the Association and otherwise on such terms as the Board of Appeal may direct. The Board of Appeal shall, where such money has been deposited, in their Award direct how and to which of the parties the amount so held shall be paid out. Provided that, if in the opinion of the Board of Appeal after hearing the parties, the appellant shall be guilty of undue delay in proceeding with his appeal, he shall, after due warning and if the Board of Appeal so decides, be deemed to have withdrawn his appeal (with the consequences as stated in Rule 16) in which event the money on deposit (with interest, if any, less tax) shall immediately become due and payable to the party and/or parties entitled thereto under the terms of the Award of Arbitration.
 - (i) If the appellant fails to make such payment as aforesaid in accordance with the directions of the Board of Appeal and within such time as the Board of Appeal stipulates, subject to the provisions of Rule 10, the Appeal shall be deemed to be withdrawn.
 - (ii) If a party requesting a Special Case fails to make such payment as aforesaid in accordance with the directions of the Board of Appeal and within such time as the Board of Appeal stipulates, subject to the provisions of Rule 10, the request for a Special Case shall be deemed to be withdrawn.

9.—The party requiring a Special Case to be stated for the opinion of the Court shall within 9 consecutive days from the requirement, pay to the Association by way of a deposit and on account of the costs, fees and expenses of or connected with the stating and argument thereof the sum of £500 or such larger sum as the Board of Appeal may require and shall, on demand, pay to the Association such further sum or sums, if any, as the Board of Appeal may from time to time require for or on account of such costs, fees and expenses.

10.—If an appellant or a party requiring a Special Case to be stated for the opinion of the Court is precluded by currency regulations from paying immediately any money due to be paid by him under this Rule and notifies the Secretary in writing (i) in the case of the appeal fee when giving notice of appeal and (ii) in the case of any further sum being called for under Rule 8(b) or being directed to be paid under Rule 8(c), within 9 consecutive days of the money being demanded, accompanied (in every case) by evidence from a bank that he has already made application for the transfer of the required sum, he shall be granted an extension of up to 35 consecutive days from the date when the said payment became due in which to pay such sum.

11.—(a) In any case in which a string award shall have been made by any arbitrators or umpire as aforesaid and the first seller, the last buyer, or any intermediate party bound thereby shall be dissatisfied therewith (whether the award shall be in his favour or against him) the first seller, the last buyer, or any intermediate party (as the case may be) or any of them shall be entitled to appeal against that award to the said Board of Appeal, provided that each of the following provisions in addition to the provisions of Rule 8 shall first have been complied with.

- (i) The appellant shall give notice of appeal to the Secretary accompanied by a copy of the notice which is required by sub-paragraph (iv) to be sent by him to the other party to the arbitration award and, subject to the

provisions of Rule 10, payment to the Association of the appropriate fee.

- (ii) If the appellant is an intermediate party he shall state in such notice of appeal whether he is appealing as buyer or seller.
- (iii) The appellant's notice of appeal (except in the event stated in Rule 10) and the remittance in respect of the fee shall reach the Secretary not later than 12 noon on the 30th consecutive day after the date of the arbitration award.
- (iv) If the appellant is a first seller or last buyer he shall, when giving notice of appeal, also despatch written notice thereof to the intermediate party in immediate contractual relationship with him and if the appellant is an intermediate party and is appealing as buyer or seller, he shall when giving notice of appeal also despatch written notice thereof to his own immediate seller or buyer, as the case may be.
- (b) Every notice given to an intermediate party by a first seller, a last buyer or by another intermediate party in accordance with the provisions of sub-paragraph (a) hereof shall be passed on in due course and rotation and such passing on shall, as between the intermediate party passing the same on and the party to whom the same is passed on, be deemed to be compliance with the said conditions relating to appeals, anything hereinbefore contained to the contrary notwithstanding.
- (c) All appeals to which this Rule applies shall be held in the like manner in which the corresponding arbitrations are required by Rule 4 to be held and any award made by a Board of Appeal shall in all respects have the like effect and shall be enforceable in the like manner as is provided in that Rule in the case of awards made in the corresponding arbitration, and non-compliance with any of the provisions of sub-paragraph (b) of this Rule shall in no way limit or affect the rights and jurisdiction of the Board of Appeal.

12.—Each party to an appeal from an arbitration award shall state its case either orally or in writing and may either appear personally or be represented by an agent engaged or who has been engaged in the trade and duly appointed in writing, but shall not be represented at the hearing of such appeal by a lawyer including counsel or solicitor, wholly or principally engaged in private practice, unless special leave shall previously have been obtained in writing from the Board of Appeal, which leave the Board of Appeal may grant or refuse in their absolute discretion and without assigning any reason.

13.—An appeal involves a rehearing and the Board of Appeal may confirm, vary or reverse the award of the arbitrators or of the umpire. The award may not however be varied or reversed unless all or all but one of the Members of the Board are in favour of so doing. The Board of Appeal may award the payment of the costs and expenses of and incidental to the arbitration and appeal, but such fees shall follow the award, unless all or all except one of the members of the Board of Appeal shall direct otherwise. The award of the Board of Appeal, whether confirming or varying the original arbitration award, shall be signed by the Chairman of the Board of Appeal, and when so signed shall be deemed to be the award of the Board of Appeal and shall be final and conclusive in all cases.

14.—In the case of the illness or death, or refusal, incapacity or inability to act, of any Member elected to serve on a Board of Appeal, the remaining Members of the Board may, in the absence of a duly elected substitute and provided that the number of Members is not reduced below four, act and exercise all the powers of a Board of Appeal. If it be reduced to three the parties or their representatives shall decide whether the Board be re-constituted.

15.—The Board of Appeal shall have the power to vary an arbitration award (in addition to the power to vary in any other manner) by increasing, if the Board shall see fit, the liability of the appellant.

16.—An appellant from an arbitration award shall have the right, at any time before the hearing of the appeal is begun, to withdraw his appeal. On notice being received from the appellant within 10 consecutive days of the date on which the appeal is accepted half of the fee shall be returned and on notice not later than 48 hours before the time fixed for the hearing a quarter of

Exhibit E - Affidavit of Myron R. Laserson on behalf of Continental Grain Export Corporation

the fee shall be returned, but on any later withdrawal no part of the fee shall be returned. In the event of an appellant withdrawing his appeal as aforesaid, the Board of Appeal shall have the power to award such sum by way of costs as they in their absolute discretion deem to be proper in the circumstances.

17.—Where appeals from an arbitration award are lodged by both parties and the Board of Appeal directs that the fees shall be divided, £20 shall be returned to each party, and when the fees are not so divided, £40 out of the fee lodged shall be returned to the successful appellant.

18. The Secretary may call upon either of the disputing parties to take up the award of the Board of Appeal, and in such case the party so called upon shall take up the award and pay the fees, costs and expenses.

19. Any dispute as to whether any of the conditions referred to in Rules 8 and 11 have been complied with shall be heard and determined by the Board of Appeal. If the Board of Appeal shall determine that any of those conditions have not been complied with, it may in its absolute discretion extend the time for compliance (notwithstanding that the time may already have expired) or dispense with the necessity for compliance and may proceed to hear and determine the appeal as if each and all of those conditions had been complied with. The determination of the Board of Appeal of any matter to which this paragraph applies shall be final, conclusive and binding.

GENERAL PROVISIONS

20.—All samples sent to the Association for arbitration, testing and/or other purposes shall become and be the absolute property of the Association.

21.—(a) No award by arbitrators or an umpire shall be questioned or invalidated on the ground that either of the arbitrators or umpire is or was not qualified to act as provided in Rule 1, unless objection to his acting is made in writing before the hearing of such arbitration is begun.

(b) No award of a Board of Appeal or decision by a Board of Appeal on a preliminary issue as defined in Rule 5(k), shall be questioned or invalidated on the ground of any irregularity in the election of the Board of Appeal or of any of its members, or on the ground that any member of the Board of Appeal was not eligible to serve, unless objection is made in writing and established to the satisfaction of the Board of Appeal before the hearing of the Appeal or of the preliminary issue is begun.

22.—Whenever it shall appear to the Council that by reason of a state of war, war-like operation, strike, lock-out, riot or civil commotion existing, or which may hereafter exist, parties to contracts which have been, or may hereafter be made, upon any of the contract forms of the Association, have been, or may be prevented from exercising any of their rights within the time limits prescribed by these Rules, the Council shall have, and shall be deemed always to have had, the power to extend any of such time limits at any time and from time to time and to any extent necessary to enable justice to be done between the parties. Such extension may be made generally or with reference to any particular dispute.

In the event of the Council deciding so to extend any of such time limits with reference to any particular dispute, notice thereof shall be given by the Council to any of the parties to the contract who may be available to receive it.

23.—The Provisions of the Arbitration Act, 1950, or of any statutory modification or re-enactment thereof for the time being in force, shall apply to every arbitration and appeal as aforesaid, save in so far as the same are modified by or are inconsistent with any of the foregoing provisions of these rules.

DEFAULTERS

24.—In the event of any party to an arbitration/appeal held under these Rules neglecting or refusing to carry out or abide by a Final Award of arbitrators or umpire or Board of Appeal made under these Rules, the Council of the Association may post on the Association's Notice Board and/or circularise to Members in any way thought fit notification to that effect. The parties to any such arbitration/appeal shall be deemed to have consented to the Council taking such action as aforesaid.

SUMMARY OF FEES

Official Appointment of an Arbitrator	Members	£10	} per contract
	Non-members	£10	
Official Appointment of an Umpire		£5	
Arbitration Awards			
(In addition to fees charged by arbitrators).			
Association's basic fee (Technical & Quality)		£20	
Fee, when the official form of contract has not been used		£10	
Fee to be paid by each Non-member named as a principal in the award		£5	

All Communications to be addressed to
The Secretary, The Grain and Feed Trade Association, 28 St. Mary Axe, London, EC3A 8EP.

CHARLES & CO. LTD., LONDON

EMPRESA PUBLICA DE COMERCIALIZACION
DE HARINA Y ACEITE DE PESCADO, and
EMPRESA PUBLICA DE SERVICIOS
AGROPECUARIOS.

75 Civ. 4511 RO

AFFIDAVIT

Defendants.

I am a member of the bar of this Honorable Court and I make this affidavit on information and belief in opposition to the separate motions of defendants Continental Grain Company and Continental Grain Export Corporation, each calling for an order staying proceedings and trial as to each of them pending alleged arbitrations.

MALOOF'S AFFIDAVIT ON BEHALF
OF PLAINTIFFS

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This action in the amount of \$4,700,000.00 is for shortage, damage, deterioration and contamination occasioned to a shipment of 26,870 metric tons of number 3 yellow corn which was loaded on board the S.S. YUKON MART at Philadelphia, Pennsylvania on July 18, 1974, for carriage and transportation to Callao, Peru. The cargo's deficiencies were discovered upon the vessel's arrival at the port of destination, forty-five days later.

The subject shipment was purchased by plaintiff Empresa Publica De Servicios Agropecuarios (hereinafter referred to as EPSA), a public corporation of the government of Peru, to satisfy a then present national shortage of maize in Peru. Public bids were solicited at Lima, Peru, and, on July 3, 1974, defendant Continental Grain Export Corporation (hereinafter referred to as Export) submitted its offer to EPSA, a copy of which is annexed hereto as Exhibit A. Export's bid was accepted by EPSA, and, on July 3, 1974, a contract for the sale of the subject shipment was entered into between the two parties. A copy of that contract is annexed hereto as Exhibit B.

The sixth clause of the contract of sale incorporated by reference Export's offer of sale. (Exhibit A hereto). It should be noted at this juncture, that Export's offer of sale provides under "Other Conditions",

"the quantity, condition and quality are final on loading, according to the bills of lading, and all other conditions will be in accordance with NAEGA No. 2".

The seventh clause of the contract of sale further provides:

(English translation)

"The parties indicate as domicile:
The SELLER as Jiron Camana 851, Lima.
The BUYER as Jr. Cahulde 805, 7th Floor,
Jesus Maria and submit themselves to the

MALOOF'S AFFIDAVIT ON BEHALF
OF PLAINTIFFS

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judges of Lima, Peru, waiving any other [jurisdiction] which may favor them. Likewise they waive any intervention or claim of diplomatic nature. "

The parties to the contract of sale having specifically provided for judicial jurisdiction at Lima, Peru and waiving any other which may favor them, the arbitration clause of NAEGA No. 2 was inapplicable.

On July 3, 1974, addendum number 1 was added to the contract of sale by the parties which reads as follows: (English translation)

"In consideration of the fact that North American Export Grain Association (NAEGA No. 2) covers the acquisitions on the basis FOB and the sale has been made on the basis of "Cost and Freight". It is established under mutual accord that other conditions not specified in our contract will be governed by the clauses stipulated in Contract Grain and Feed Trade Association No. 30 (GAFTA No. 30), specific for purchases [sic] on the basis of "Cost and Freight". (emphasis supplied).

Since quality and Peruvian jurisdiction are specifically provided for in the contract of sale, the arbitration clause of GAFTA No. 30 is likewise inapplicable. Arbitration was, therefore, not demanded by plaintiffs of defendant Export.

We deem it appropriate at this time to call the Court's attention to the Exhibits attached to defendant Export's moving papers. "GAFTA No. 30" attached thereto as Exhibit D is dated September 2, 1974 to be effective on that date. That Exhibit incorporates the arbitration rules of "GAFTA No. 125" in force on the date of the contract. Attached to Export's moving papers as "Exhibit E" are the arbitration rules of "GAFTA No. 125" with an effective date of 1st October, 1974. The contract of sale, however,

is dated July 3, 1974 and Addendum No. 1 to that contract is dated July 8, 1974. Certainly rules drawn after the contract of sale had been signed could not have been within the contemplation of the parties when they reached their agreement.

We also note for the Court's attention that the "GAFTA No. 30" form attached to defendant Export's moving papers as Exhibit D, applies, by the Exhibit's very language, only to sales on "C.I.F. terms". Addendum No. 1 to the contract of sale, however, particularized as the reason for substituting the "NAEGA No. 2" form with "GAFTA No. 30" that the former applied only to FOB sales and the latter to C & F contracts. With the sale in question on a C & F basis, the GAFTA No. 30 form clearly fails to conform to the terms of the instant sale of corn. Plaintiffs cannot explain to this Court why this was done in this manner, particularly since the contract of sale itself provided for the submission of the parties to the sale to the Courts of Peru.

When the bill of lading was issued covering the subject shipment, the shipper was identified as defendant Continental Grain Company (hereinafter referred to as "Grain Co."). Plaintiff, EPSA, believed that the bill of lading was issued pursuant to a charter party since that was the type of bill of lading which was provided for in the Fourth Clause of the contract of sale (Exhibit B hereof), notwithstanding that the bill of lading itself contained no reference thereof. (A copy of the bill of lading is annexed hereto as Exhibit C).

A voyage charter party had been entered into, however, between the defendant "Grain Co." and defendant Breda Shipping Co. Ltd. (hereinafter referred to as "Breda") covering the voyage of the shipment in question.

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MALOOF'S AFFIDAVIT ON
BEHALF OF PLAINTIFFS

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(A copy of that charter party is annexed hereto as Exhibit D). That charter party provides for New York arbitration of disputes between the parties thereto, without any limitation of time for the parties to appoint their respective arbitrators.

The moving papers hereinbefore filed by defendant Grain Co. emphasize that it was the carrier. The bill of lading, however, clearly identifies it as the shipper. The role in this matter played by defendant "Grain Co." is clearly mysterious as well as patently mischevious as plaintiff EPSA had not purchased the shipment from that defendant. An evidenciary hearing to explain defendant "Grain Co.'s" position vis-a-vis defendant Export and plaintiffs is urgently needed and appropriate. The result of such an evidenciary hearing may disclose that defendants Export and Grain Co. are the same company and/or one being the agent of the other. If so, it is manifestly unfair for it to come to Court with two sets of attorneys each asking separate orders to compel plaintiffs to arbitrate in two separate fori. The Second Circuit has recently emphasized the equitable nature of arbitration proceedings and that such proceedings may not be abused. (See plaintiff's brief on that point).

Defendant "Grain Co's." moving papers ground their demand for arbitration on the terms of the bill of lading, (Exhibit C hereof). On the face of that bill of lading, Clause 1 provides:

"1. This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities

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under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent but no further." (emphasis added)

On the back of that bill of lading, Clause 10 provides:

"10. All terms, conditions and provisions of the strike, lighterage clause No. 28 and Arbitration Clause of the "Centrocon" charter party to apply."

The "Centrocon" charter-party Arbitration Clause referred to in Clause 10 of the bill of lading provides:

"All disputes from time to time arising out of this contract shall, unless the parties agree forthwith on a single Arbitrator, be referred to the final arbitrament of two Arbitrators carrying on business in London who shall be Members of the Baltic and engaged in the Shipping and/or Grain Trades, one to be appointed by each of the parties, with power to such Arbitrators to appoint an Umpire. Any claim must be made in writing and Claimant's Arbitrator appointed within three months of final discharge and where this provision is not complied with the claim shall be deemed to be waived and absolutely barred. No award shall be questioned or invalidated on the ground that any of the Arbitrators is not qualified as above, unless objection to his acting be taken before the award is made."

The above arbitration clause, with its insidious and unconscionable three month limitation period within which to appoint arbitrators is clearly repugnant to the one year suit time limitation period of the Carriage of Goods by Sea Act of 1936 (COGSA) 46 U.S.C. §1300 et seq., and is, therefore, by the very terms of the bill of lading, void. Arbitration is inconsis-

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ent with litigation and three months time within which to commence arbitration is in conflict with the one year COGSA suit time period.

That Act (COGSA), applies by operation of law because the bill of lading in this case is both the document of title and contract of carriage between a United States and a foreign port and thus comes within Section 1301 (b) which reads:

"(b) The term 'contract of carriage' applies only to contracts of carriage covered by a bill of lading or any similar document of title, insofar as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same."

The shipment also comes within that section of Article 1303 (6) of the Carriage of Goods by Sea Act which reads:

"Time for Suit, One Year--Effect of Failure to Give Notice.

In any event, the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered."

as well as Article 1303 (8) which reads:

"Negligence Clauses Null and Void.

Any clause, covenant, or agreement in a contract of carriage relieving the

MALOOF'S AFFIDAVIT ON
BEHALF OF PLAINTIFFS

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carrier or the ship from liability for loss or damage to or in connection with the goods, arising from negligence, fault, or failure in the duties and obligations provided in this section, or lessening such liability otherwise than as provided in this Act, shall be null and void and of no effect."

Under the Carriage of Goods by Sea Act plaintiffs are entitled to have the United States District Court, the original Court of maritime jurisdiction under the United States Constitution, adjudicate this action and to have denied the motion which attempts to divest this Court of jurisdiction and refer this action to three commercial men in London. Such an attempt is a patent lessening of plaintiffs rights under COGSA. PUM

Arbitrators are not bound by the law or the facts as is this Court. Furthermore, the arbitration clause referred to by Grain Co. requires arbitrators to be chosen within 90 days. This is a very serious defect in the agreement as it reduces plaintiffs' time to institute proceedings from one year to 90 days.

Indicative of the position taken by Continental Grain is the document, "Chamber of Shipping River Plate Charter Party 1914 London", attached to Grain Co's. affidavit as Exhibit B. In addition to the obscure provision on the back of the bill of lading setting out the Centrocon arbitration clause, the form further has printed on its face the word "homewards", meaning bound for England.

Not only was this shipment not bound for England and, therefore, was not "homewards" but according to its own printed terms this document was amended periodically, i.e., in 1934, 1937, and 1950, and Grain Co. does not allege which amendment is intended to apply and has not shown that the form has not been radically altered by its amendments. If it

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MALOOF'S AFFIDAVIT ON
BEHALF OF PLAINTIFFS

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were a "homewards" shipment, the 90 days would be less onerous because the consignee would have the benefit of nearby analytical expertise and the parties would be in the jurisdiction where the arbitrators would be chosen and the proceeding would take place. As it was, it took longer than the three month period to analyse the corn and receive the results of the testing because such testing facilities are not readily available in Peru.

Again, the Centrocon charter-party was designed as an agreement between the shipowners and the time-charterers. It cannot be supposed that a Peruvian buyer would be familiar with its terms.

It appears that Grain Co. as "shipper" agreed with Breda on the terms of the bill of lading and the charter party but as the shipper and/or carrier it cannot be supposed that it would be the agent for the consignee in that purpose for there would be a distinct conflict of interest.

In conclusion, the relevant documents conclusively show that plaintiffs' never agreed to arbitrate disputes with defendant Export nor defendant Grain Co.

/s/ David L. Maloof

DAVID L. MALOOF

Sworn to before me this

23rd day of December, 1975.

Notary Public

CABLES
GEMOSO
LIMA - PERU

BARCO S. A.

EDIFICIO EL SOL 1502
CAMANA 051
LIMA - PERU

TEL. 25-0419-24-2176
CASTILLA 504
TELEX - 3540022

**MALOOF'S AFFIDAVIT
ON BEHALF OF PLAINTIFFS**

Lima, 3 de Julio de 1974.

Señores
EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS,
(" E. P. S. A. "),
Jr. Camacho 805,
JESUS MARIA

Muy señores nuestros :

: En representación de los señores Continental Grain
Export Corporation, tenemos el agrado de hacerles la siguiente oferta :

25,000 L. T. 5% más o menos, opción del Comprador, al precio contratado
de N° 3 Yellow Corn, con humedad máxima 15.5% .

EMBARQUE : Julio 4/12 de 1974, con ETA Julio 5/6, por el Vapor YUKON
MART.

PRECIO : U.S. \$.158.20 por tonelada métrica, Costo y Flete, Free Out,
Callao.

PAGO : Mediante Carta de Crédito, irrevocable y confirmada, abierta
inmediatamente a favor de los Vendedores.

OTRAS CONDICIONES :

-- La cantidad, condición y calidad son finales al embarque, según los conocimientos de embarque, y todas las demás condiciones serán de acuerdo al Contrato NAECA N° 2.

-- El Vendedor no garantiza, pero solamenta para su gobierno, en el puerto de Philadelphia es usual cargar un buque B/C. de más ó menos 26,000 T.M. dentro de 3 días, siempre y cuando el tiempo lo permita.

-- Gastos Consulares, por cuenta del Vendedor.

-- Certificado de los elevadores, no mayor de 15 días de la fecha de embarque, que el N° 3 Yellow Corn ha sido tratado con Malathion.

ENT A

BEST COPY AVAILABLE

40a
B / R C O S. A.

EDIFICIO EL SOL 1502

CAMANA 051

LIMA - PERU

TEL 23-0319 24-2176

CASILLA 504

TELEX - 3540021

EXHIBIT A

MALLOOF'S AFFIDAVIT
ON BEHALF OF PLAINTIFFS

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DEMURRAGE, DESPATCH :

2,000 L. T. descarga diarias con demurrage US\$.8,000.00
y despatch US\$.4,000.00 por día.

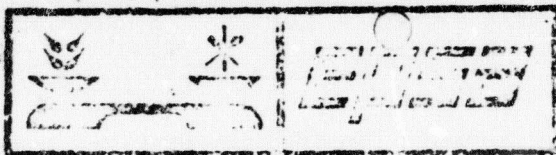
Esta oferta tiene validez, hasta las 6:45 p.m., hora
de Lima, del día de hoy Miércoles 3 de Julio de 1974. Lamentamos no po-
der extender esta validez, en vista de que el día de mañana es feriado en
los Estados Unidos de Norte América.

: Quedamos siempre, a la espera de sus gratas órdenes,
repitiéndonos de Uds.

Attos. yb Ss. Ss.

B A R C O S. A.

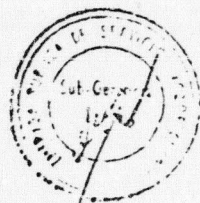
Wm. Barnett
Wm. Barnett



41a

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CAHUIDE 805 Vo. PISO TELEFONO 71 1061 (LIMA 51)CONTRATO Nº 003-74-DIN.**MALOOF'S AFFIDAVIT ON
BEHALF OF PLAINTIFFS**

CONTRATO DE COMPRA-VENTA DE 25,000 T.L. 5% MAS O MENOS DE -
MAIZ AMARILLO Nº 3 O MEJOR, HUMEDAD MAXIMA 15.5% QUE CELE -
BRAN LA EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS - EPSA -
Y LA FIRMA CONTINENTAL GRAIN EXPORT CORPORATION .-



Conste por el presente documento el Contrato de Compra-Venta que celebran en su calidad de VENDEDOR la firma CONTINENTAL GRAIN EXPORT CORPORATION representada por BARCO S.A., con L.T. Nº 9081704 y domicilio en Comaná 851, Lima, representada por el Sr. William Barnett Williams con C.E. Nº 2706 y L.T. Nº 2466805 y en su calidad de COMPRADOR, la EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS con L.T. Nº 9947221, representada por su Director Ejecutivo Ing. Manuel Díaz Cano con L.E. Nº 5614153 y L.T. Nº 6268112 y su Gerente de Importaciones Sr. Fernando Sarmiento M., con L.E. Nº 2804471 y L.T. Nº 0518913, de acuerdo a los siguientes términos:

CLAUSULA PRIMERA:- Por el presente Contrato, la firma -
CONTINENTAL GRAIN EXPORT CORPORATION
vende y el COMPRADOR adquiere hasta 25,000 T.L., 5% más o menos de Maíz Amarillo Nº 3 ó mejor, 15.5% máximo de humedad según calidad y peso final definitivo al embarque, de acuerdo a los certificados otorgados por Inspectores autorizados del Ministerio de Agricultura de los Estados Unidos de Norteamérica.

CLAUSULA SEGUNDA:- El precio estipulado es de US\$ 158.20 por T.M., Costo y Flete, Free out, Callao.

CLAUSULA TERCERA:- El VENDEDOR se obliga a embarcar la mercadería entre el 4 y 12 de Julio -
de 1974.

CLAUSULA CUARTA:- El pago se realizará mediante Carta -
de Crédito irrevocable y confirmada, negociada.

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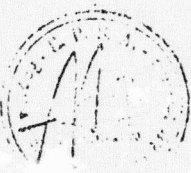
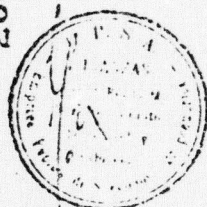
**EXHIBIT B**

EXHIBIT B- MALOOF'S AFFIDAVIT ON BEHALF OF
PLAINTIFFS

ciable y transferible abierto en un Banco de Primera clase en los Estados Unidos de Norteamérica y pagadera a la vista contra la presentación de los siguientes documentos de embarque:

- a) Certificado de Origen, otorgado por las Autoridades correspondientes (1 original y 3 copias).
- b) Conocimiento de embarque, juego completo, limpio a bordo (3 originales y 5 copias) charter parties Bill of Lading.
- c) Factura Consular (originales y 5 copias).
- d) Factura Comercial (originales y 5 copias).
- e) Certificado de Calidad otorgado por Inspectores autorizados del Ministerio de los Estados Unidos.
- f) Certificado de Peso otorgado por entidad oficial en los Estados Unidos.
- g) Certificado Fito-Sanitario otorgado por USA Departamento de Agricultura.
- h) Certificado de Fumigación no mayor de 15 días de antigüedad.

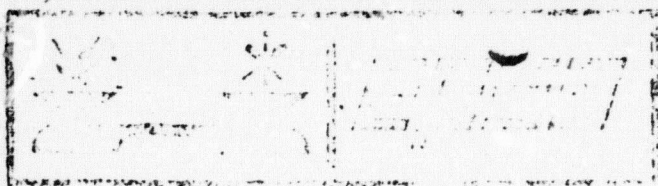
CLAUSULA CUENTA:- Son de cuenta del COMPRADOR:

- a) El Seguro Marítimo para el transporte de la mercadería.
- b) Los gastos bancarios de esta operación.
- c) Despatch/Demurrage: 2,000 TL de descarga diaria a un demurrage de US\$ 8,000 por día y/o fracción de día y despatch de US\$ 4,000 por día y/o fracción de día.

Son de cuenta del VENDEDOR:

- a) Los Gastos Consulares.
- b) Los gastos ocasionados por el concurso de precios que han dado origen al presente Contrato.
- c) Los gastos de Fumigación.

//..3



43 a.

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CAHUIDE 805 5to. PISO LIMA 7 PERU

Contrato Nº 003-74-DIM.

EXHIBIT B

MALOOF'S AFFIDAVIT ON
BEHALF OF PLAINTIFFS

- 3 -

CLAUSULA SEXTA:- La oferta de venta también forma parte
del presente Contrato.

CLAUSULA SEPTIMA:- Las partes señalan como domicilio:

El VENDEDOR en:

Jirón Camaná 351 - Lima.

El COMPRADOR en:

Jr. Cahuide 805, Piso 7, Jesús Horita,
y se someten a los jueces de Lima-Perú, renunciando a cual
quier otro que pudiera favorecerles. Asimismo, hacen renun
cia expresa a cualquier intervención o reclamación diplomá
tica.

El presente Contrato, 003-74-DIM, es suscrito con la firma
CONTINENTAL GRAIN EXPORT CORPORATION, en Lima a los 3 días
del mes de Julio de 1974.

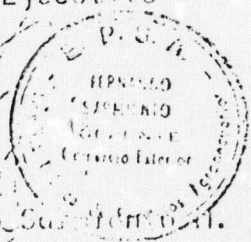
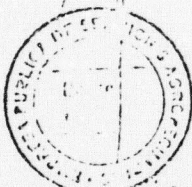
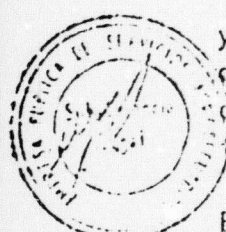
POR EPSA.

POR CONTINENTAL GRAIN EXPORT CO.

Ing. Manuel Díaz Cano
Director Ejecutivo

Sr. William Barnett Williams
C.E. Nº 2786
L.T. Nº 2466805

Fernando Sandoval H.
Gerente Comercio Exterior
Importación



2307 -3

44a

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CALLE DE LOS VECINOS 100, LIMA 1, PERU

EXHIBIT B

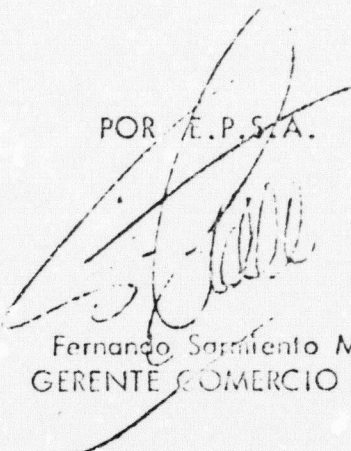
ADDENDUM N° 1 AL CONTRATO N° 003-74-DIM DEL 3 DE JULIO 1974
E.P.S.A. / CONTINENTAL GRAIN EXPORT CORP.

MALOOF'S AFFIDAVIT ON BEHALF
OF PLAINTIFFS

En consideración que el North American Export Grain Association (NAEGA N° 2), ampara las adquisiciones en base F.O.B. y habiéndose efectuado la compra en base "Costo y Flete", queda establecido de mutuo acuerdo que las demás condiciones no especificadas en nuestro Contrato, se regirán con las cláusulas estipuladas en el Contrato Grain and Feed Trade Association N° 30 (GAFTA N° 30), específico para las compras sobre base "Costo y Flete".

Lima, 8 de Julio de 1974.

POR E.P.S.A.


Fernando Sarmiento Moray.
GERENTE COMERCIO EXTERIOR

POR CONTINENTAL GRAIN EXPORT CORP.

William Barnett Williams
C.F. N° 2786
L.T. N° 2466805

**MALOOF'S AFFIDAVIT
ON BEHALF OF PLAINTIFFS**

United States for prohibition, distribution or sale
or exhibition to the public of motion pictures, com-
mercial or otherwise, of violence and obscenity
otherwise prohibited by the United States.

Anteriormente de una de las
Segunda Determinación
OSCAR VALLE

ENTRADA A LA UNIÓN OT:
EPC-12 - EMPRESA PUBLICA
CERTIFICACION DE EPTAL DE PUEBLO.
AUG 1974

REC-12 - DE
U.S. CONSTRUCTION
1974

George C. G. G. G.

ENTREGARSE A LA OPD N DE:

ENTRECOUSE
— E. P. S. O. —
— 9274 —

FINA
BANCO DI

[Signature]

1. When taken off the record, the adjustment is made in accordance with the law and practice of the United States of America, the following:

of a "common carrier" is one that is operated by the owner, subject to the right of the common carrier to refuse to receive or deliver goods to a particular shipper. Such a carrier is not required, by most of the public shippers

1. The ship must be a United States ship. If the ship comes into the United States from a foreign port, it must be a United States ship or a ship of a foreign country which is a member of the United States Navy. If the ship comes from a foreign port, it must be a United States ship or a ship of a foreign country which is a member of the United States Navy. If the ship comes from a foreign port, it must be a United States ship or a ship of a foreign country which is a member of the United States Navy. If the ship comes from a foreign port, it must be a United States ship or a ship of a foreign country which is a member of the United States Navy.

19. The authors would like to thank Kim, a participant in the research, for her assistance in gathering information on working conditions in South Korea and for her assistance in the translation of the questionnaire.

[illegible]

12. Vessel to have the responsibility of finding a route for this and subsequent voyages.

1. The Party of Labour is against the proposal that led to regard the port of Leningrad as declared blockaded after fulfilment of the conditions of the port of Leningrad. The Party of Labour is against the proposal to declare the port of Leningrad as declared blockaded after fulfilment of the conditions of the port of Leningrad.

[illegible][illegible]

1. The Party of the Contractor shall be responsible for the execution of the work in accordance with such orders or directions shall be a fulfillment of the contract. The Party of the Contractor shall be responsible for the execution of the work in accordance with such orders or directions shall be a fulfillment of the contract. The Party of the Contractor shall be responsible for the execution of the work in accordance with such orders or directions shall be a fulfillment of the contract.

[illegible]

D

EXHIBIT D - MALOOF'S
AFFIDAVIT ON BEHALF
OF PLAINTIFFS

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RIDER TO CHARTER PARTY SS "YUKONMART" DATED JULY 5, 1974

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7. VESSEL TO BE CONSIGNED TO OWNERS' AGENTS AT LOADING PORT, AND TO CHARTERERS'/RECEIVERS' AGENTS AT DISCHARGE PORT.
8. CHARTERERS TO APPOINT AND PAY STEVEDORES AT LOADING PORT; RECEIVERS' STEVEDORES TO BE EMPLOYED AT PORT OF DISCHARGE.
9. CARGO TO BE DISCHARGED BY RECEIVERS' STEVEDORES AT THE AVERAGE RATE OF 2,000 LONG TONS, PER WEATHER WORKING DAY OF 24 (TWENTY-FOUR) CONSECUTIVE HOURS, SUNDAYS AND HOLIDAYS EXCEPTED, FREE OF RISK AND EXPENSE TO THE VESSEL.
10. LOADING BERTH ORDERS TO BE GIVEN BY WIRELESS UPON RECEIPT OF MASTER'S APPLICATION, UNLESS GIVEN EARLIER. ON RECEIPT OF LOADING BERTH ORDERS MASTER TO NOTIFY "TRIBSHIP NEW YORK" BY WIRELESS OF THE LATEST ESTIMATED TIME OF ARRIVAL AT LOADING PORT AND TIME OF READINESS TO LOAD AFTER DISCHARGE OF BALLAST, IF ANY, AND ANY NECESSARY FITTING.
11. NOTIFICATION OF THE VESSEL'S READINESS AT DISCHARGE PORT MUST BE DELIVERED AT THE OFFICE OF THE RECEIVERS OR THEIR AGENTS AT OR BEFORE 4 P.M. (OR AT OR BEFORE NOON IF ON A SATURDAY). VESSEL ALSO HAVING BEEN ENTERED AT THE CUSTOM HOUSE, AND THE LAYDAYS WILL THEN COMMENCE AT 7 A.M. ON THE NEXT BUSINESS DAY, WHETHER IN BERTH OR NOT.
12. CHARTERERS TO PAY DEMURRAGE, IF INCURRED AT LOADING PORT, AT THE RATE OF \$8,000 (EIGHT THOUSAND DOLLARS) U.S. CURRENCY PER DAY FOR EACH AND EVERY DAY OR PRO RATA FOR PART OF A DAY, FOR ALL TIME USED IN LOADING IN EXCESS OF ALLOWED LAYTIME. CHARTERERS TO COLLECT DESPATCH IF EARNED AT LOADING PORT, AT THE RATE OF \$4000 (FOUR THOUSAND DOLLARS) U.S. CURRENCY PER DAY FOR EACH AND EVERY DAY OR PRO RATA FOR PART OF A DAY, FOR ALL LAYTIME SAVED IN LOADING.
13. RECEIVERS/CHARTERERS TO PAY DEMURRAGE, IF INCURRED AT DISCHARGING PORT, AT THE RATE OF \$8000 (EIGHT THOUSAND DOLLARS) U.S. CURRENCY PER DAY FOR EACH AND EVERY DAY OR PRO RATA FOR PART OF A DAY, FOR ALL TIME USED IN DISCHARGING IN EXCESS OF ALLOWED LAYTIME. RECEIVERS/CHARTERERS TO COLLECT DESPATCH IF EARNED AT DISCHARGING PORT AT THE RATE OF \$4000 (FOUR THOUSAND DOLLARS) U.S. CURRENCY PER DAY FOR EACH AND EVERY DAY OR PRO RATA FOR PART OF A DAY, FOR ALL LAYTIME SAVED IN DISCHARGING.
14. ANY DUES AND/OR TAXES ON VESSEL AND/OR FREIGHT TO BE FOR OWNERS' ACCOUNT AND ON CARGO TO BE FOR RECEIVERS'/CHARTERERS' ACCOUNT.
15. LAYDAYS ARE NON-REVERSIBLE.
16. OVERTIME TO BE FOR THE ACCOUNT OF THE PARTY ORDERING SAME, IF ORDERED BY PORT AUTHORITIES AND/OR ELEVATOR TO BE FOR CHARTERERS' ACCOUNT AT LOADING PORT, AND AT DISCHARGING PORT, TO BE FOR CHARTERERS'/RECEIVERS' ACCOUNT. OFFICERS' AND CREW'S OVERTIME TO BE FOR VESSEL'S ACCOUNT.
17. EXTRA INSURANCE, IF ANY REQUIRED, DUE TO VESSEL'S AGE, FLAG, CLASSIFICATION OR OWNERSHIP, TO BE FOR OWNERS' ACCOUNT.
18. OWNERS WARRANT THAT THIS VESSEL HAS NOT CALLED AT ANY CUBAN OR NORTH VIETNAMESE PORT SINCE JANUARY 1ST, 1963; FURTHERMORE, OWNERS WARRANT THAT THIS VESSEL PRESENTLY HAS NO COMMITMENT TO CALL AT CUBA OR NORTH VIETNAM SUBSEQUENT TO THE VOYAGE COVERED UNDER THIS CHARTER PARTY.
19. VESSEL'S MAXIMUM DRAFT ON SAILING PHILADELPHIA NOT TO EXCEED 31' SALT WATER WHICH CHARTERERS GUARANTEED AVAILABLE.

EXHIBIT D - MALOOF'S
AFFIDAVIT ON BEHALF OF
PLAINTIFFS

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-2-

RIDER TO CHARTER PARTY SS "YOKO MARU" DATED JULY 5, 1974

20. B.F.C. SATURDAY CLAUSE:

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1. NOTWITHSTANDING ANY CUSTOM OF THE PORT TO THE CONTRARY, SATURDAY SHALL NOT COUNT AS LAYTIME AT LOADING AND DISCHARGING PORT OR PORTS WHERE STEVEDORING LABOUR AND/OR GRAIN HANDLING FACILITIES ARE UNAVAILABLE ON SATURDAY OR AVAILABLE ONLY AT OVERTIME AND/OR PREMIUM RATES.
 2. IN PORTS WHERE ONLY PART OF A SATURDAY IS AFFECTED BY SUCH CONDITIONS, AS DESCRIBED UNDER "1" ABOVE, LAYTIME SHALL COUNT UNTIL THE EXPIRATION OF THE LAST STRAIGHT TIME PERIOD.
 3. WHERE SIX OR MORE HOURS OF WORK ARE PERFORMED AT NORMAL RATES, SATURDAY SHALL COUNT AS A FULL LAYDAY.
21. THE FOLLOWING CLAUSES, AS ATTACHED, ARE TO BE CONSIDERED AS FULLY INCORPORATED IN THIS CHARTER PARTY:

U.S.A. CLAUSE PARAMOUNT, P. & I. BUNKER DEVIATION CLAUSE, NEW JASON CLAUSE, CHAMBER OF SHIPPING WAR RISKS CLAUSES NOS. 1 AND 2, NEW BOTH-TO-BLAKE COLLISION CLAUSE, NEW YORK PRODUCE EXCHANGE ARBITRATION CLAUSE AND AMENDED STRIKE CLAUSE OF THE "CENTROCON" CHARTER PARTY.

EXHIBIT D - MALOOF'S
AFFIDAVIT ON BEHALF OF
PLAINTIFFS

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U.S. CLAUSE PARAGRAPHS:

This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

NEW LADDER CLAUSE:

In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the Carrier is not responsible by statute, contract or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the Carrier before delivery.

NEW BOTH TO BLAME COLLISION CLAUSE:

If the liability for any collision in which the vessel is involved while performing this Bill of Lading falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier."

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

P. AND I. BUNKER DEVIATION CLAUSE:

The vessel, in addition to all other liberties, shall have liberty as part of the contract voyage and at any stage thereof to proceed to any port or ports whatsoever, whether such port(s) be on or off the direct and/or customary route or routes, to the ports of loading or discharge named in this Charter, and there take oil bunkers in any quantity in the discretion of owners, even to the full capacity of fuel tanks, deep tanks and any other compartment in which oil can be carried, whether such amount is or is not required for the chartered voyage.

WAR RISK CLAUSES:

1. No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or there-

After be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this Charterparty as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered.

2. The ship shall have liberty to comply with any orders or directions as to the departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person acting, under the terms of the War Risks Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfillment of the contract voyage and the freight shall be payable accordingly.

C.S.U.K., London - 26th September, 1935.

ARBITRATION CLAUSE NEW YORK:

Should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

AMENDED CLAUSE ON STRIKE CLAUSES

IF THE CARGO CANNOT BE LOADED BY REASON OF RIOTS, CIVIL COMMOTIONS OR OF A STRIKE OR LOCK-OUT OF ANY CLASS OF WORKMEN ESSENTIAL TO THE LOADING OF THE CARGO OR BY REASON OF OBSTRUCTIONS OR STOPPAGES BEYOND THE CONTROL OF THE CHARTERERS CAUSED BY RIOTS, CIVIL COMMOTIONS, OR A STRIKE OR LOCK-OUT ON THE RAILWAYS, OR IN THE DOCKS, OR OTHER LOADING PLACES OR IF THE CARGO CANNOT BE DISCHARGED BY REASON OF RIOTS, CIVIL COMMOTIONS, OR OF A STRIKE OR LOCK-OUT OF ANY CLASS OF WORKMEN ESSENTIAL TO THE DISCHARGE, THE TIME FOR LOADING OR DISCHARGING AS THE CASE MAY BE, SHALL NOT COUNT DURING THE CONTINUANCE OF SUCH CAUSES, PROVIDED THAT A STRIKE OR LOCK-OUT OF THE STEVEDORES AND/OR RECEIVERS' MEN SHALL NOT PREVENT DEMORRAGE ACCRUING IF BY THE USE OF REASONABLE DILIGENCE THEY COULD HAVE OBTAINED OTHER SUITABLE LABOR AT RATES CURRENT BEFORE THE STRIKE OR LOCK-OUT. IN CASE OF ANY DELAY BY REASON OF THE BEFORE MENTIONED CAUSES, NO CLAIM FOR DAMAGES OR DEMORRAGE SHALL BE MADE BY THE CHARTERERS, RECEIVERS OF THE CARGO, OR OWNERS OF THE STEAMER. FOR THE PURPOSES, HOWEVER, OF SETTLING DEMORRAGE DEMANDS, ANY TIME LOST BY THE SHIP OR CARGO AS A RESULT OF THE ABOVE CAUSES SHALL BE COUNTED AS TIME LOST TO THE SHIP OR CARGO AS THE CASE MAY BE.

BERGEN'S ANSWER, ETC.

At the times mentioned in the complaint, the vessel was being operated pursuant to the terms and conditions of a New York Produce Exchange Time Charter dated May 24, 1974, between defendant Bergen Shipping Co., Ltd., and co-defendant Breda Shipping Co., Ltd., and pursuant to the terms and conditions of a Baltimore Berth Grain Charter Party (Form C, dated July 5, 1974, between co-defendant Breda Shipping Co., Ltd., and co-defendant Continental Grain Company.

Except as so admitted, it denies the other allegations set forth in the THIRD paragraph of the complaint.

FOURTH: It admits that at the times mentioned in the complaint the M/V YUKONMART was a ship employed in the carriage of merchandise by water for hire.

Except as so admitted, it denies the other allegations set forth in the FOURTH paragraph of the complaint.

FIFTH: It admits that on or about July 15, 1974, at the port of Philadelphia, co-defendants Continental Grain Company and Continental Grain Export Corporation shipped and delivered to the M/V YUKONMART and to the defendant, Bergen Shipping Co., Ltd., 26,670 kilos of corn in bulk, quality and condition unknown, for transportation to and delivery at the port of Callao in accordance with the terms of the charter and hire paid and also in consideration of certain freights paid or agreed to be paid to co-defendants and in accordance with the terms and conditions of a bill of lading.

Except as so admitted, it denies the other allegations set forth in the FIFTH paragraph of the complaint.

SIXTH: It admits that thereafter the M/V YUKONMART arrived at the port of Callao where it and the defendant, Bergen Shipping Co., Ltd., made delivery of the aforesaid cargo in accordance with the terms and conditions of the aforesaid bill of lading and charter party contracts.

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BERGEN'S ANSWER, ETC.

Except as so admitted, it denies the other allegations set forth in the SIXTH paragraph of the complaint.

SEVENTH: It denies that it has knowledge or information sufficient to form a belief as to the allegations set forth in the SEVENTH paragraph of the complaint.

EIGHTH: It admits that a demand has been made for the payment of a sum of money, no part of which has been paid.

Except as so admitted, it denies the other allegations set forth in the EIGHTH paragraph of the complaint.

FIRST DEFENSE

NINTH: This defendant puts plaintiffs to their proof of compliance with the provisions for the giving of notice as provided for in the aforementioned bill of lading and in the United States Carriage of Goods by Sea Act, 1936, 46 U.S.C.A. 1300 et seq.

SECOND DEFENSE

TENTH: (1) Due diligence was used to make the vessel seaworthy and to secure that it was properly manned, equipped and supplied, and to make the holds and all other parts of the vessel in which goods were carried safe and fit for their reception, carriage and preservation in accordance with the provisions of the aforementioned bill of lading and the United States Carriage of Goods by Sea Act, 1936.

(2) Accordingly, if the goods referred to in the complaint sustained any loss or damage while they were in the possession or custody of this defendant or on board the M/V YUKONMART due to any unseaworthiness of the vessel, which is denied, this defendant is not under any liability therefor.

54 a
BERGEN'S ANSWER, ETC.

THIRD DEFENSE

ELEVENTH: The goods were loaded and carried pursuant to the terms and conditions of the aforementioned bill of lading which was issued pursuant to the aforesaid charter party contracts and which was accepted by the shipper and consignee and which constituted the contract of carriage and which was subject to the United States Carriage of Goods by Sea Act, 1936. Accordingly, if the goods mentioned in the complaint sustained any loss or damage while in the custody of the vessel or this defendant, which is denied, this defendant claims all the rights, defenses, and immunities provided by the United States Carriage of Goods by Sea Act, 1936, the aforesaid bill of lading and charter parties which proof may show to be applicable.

FOURTH DEFENSE

TWELFTH: If the aforesaid goods sustained any loss or damage as alleged in the complaint, which is denied, and if any such loss or damage was caused by the act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, or by perils, dangers or accidents of the sea or other navigable waters, or by the arrest or restraint of princes, rulers or people, or seizure under legal process, or by quarantine restriction, or by the act or omission of the shipper or owner of the goods, his agent or representative, or by the wastage in bulk or weight, or by strikes, lockouts or stoppages or restraint of labor from whatever cause, whether partial or general, or any other loss or damage arising from inherent defect, quality or vice of the goods, or by insufficiency of packing or latent condition not discoverable by the exercise of due diligence, or any other cause arising without the fault or privity of the carrier and without the fault or neglect

of the servants or agents of this defendant, or those for whom it was responsible, this defendant is not under any liability therefor.

FIFTH DEFENSE

THIRTEENTH: In the event this defendant or the vessel should be under any liability for loss or damage to the aforesaid goods, which is denied, such recovery must be computed in accordance with the terms of the bill of lading and/or the provisions of the United States Carriage of Goods by Sea Act, 1936.

SIXTH DEFENSE

FOURTEENTH: If there was any loss or damage to the aforesaid goods, which is denied, said loss or damage was caused by the negligent, unreasonable and wrongful refusal by the plaintiffs, their representatives, agents, servants and/or employees, to promptly discharge the vessel upon her arrival and tender at Callao and said parties' failure to properly care for the aforesaid goods after their discharge and delivery at Callao.

AS AND FOR ITS COUNTER-CLAIM AGAINST PLAINTIFFS, DEFENDANT BERGEN SHIPPING CO., LTD., ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS

FIFTEENTH: At all times mentioned, the plaintiffs were consignees and holders of the aforementioned bill of lading issued by or on behalf of the defendant, Bergen Shipping Co., Ltd., which covered the goods carried on board the M/V YUKONMART, and as such, are bound to pay any general average contributions, charges and expenses arising during the voyage of the M/V YUKONMART from Philadelphia to Callao.

SIXTEENTH: The aforesaid bill of lading which constituted the contract of carriage involved in this action, contained among others, the following clauses:

"5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared therein to be signed, also sufficient security to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the Steamer in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation, or in the management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the consignees or owners of the cargo shall, nevertheless pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit, or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent, as if such danger, damage or disaster had not resulted from, or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness.

6. New Jason Clause: Where the adjustment is made in accordance with the law and practice of the United States of America, the following clause shall apply:--"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in the general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

"If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimate contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods,

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BERGON'S ANSWER, ETC.

shippers, consignees or owners of the goods to the carrier before delivery."

SEVENTEENTH: During the course of the voyage, the venture was placed in peril when the M/V YUKONMART sustained engine and machinery breakdowns which were not due to any cause for which this defendant is liable. Subsequent efforts were made to save the vessel and cargo, during which certain general average sacrifices, expenditures and expenses together with other special charges and expenses, were made and incurred, all of which were necessary for the safety and preservation of the vessel and her cargo and the vessel and cargo completed the voyage.

EIGHTEENTH: The aforesaid engine and machinery breakdowns and resulting general average sacrifices, expenditures and expenses and other special charges and expenses, were not due to any causes or negligence or unseaworthiness for which or for the consequences of which, this defendant was or is liable by law, contract or otherwise and at and before the beginning of the voyage, due diligence was exercised to make the vessel seaworthy and properly manned, equipped and supplied. Plaintiffs, under the bill of lading contract, are liable in personam for their proportionate contributions to the general average sacrifices and expenditures and this defendant was entitled to a lien on said cargoes for plaintiffs' proportionate contributions thereto.

NINETEENTH: In accordance with the foregoing bill of lading contract, Messrs. John P. Tilden, Ltd., General Average Adjusters, were appointed to prepare a general average statement and are now engaged in preparing the said statement, adjusting and stating the general average in accordance with the applicable provisions of the aforesaid contract and said general average statement will be filed herein.

TWENTIETH: The amounts due and owing from the plaintiffs have not yet been calculated and this defendant reserves its right

BERGEN'S ANSWER, ETC.

to amend this claim when the general average statement is completed.

TWENTY-FIRST: All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court and constitute admiralty and maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

AS FOR ITS CROSS-CLAIM AGAINST CO-DEFENDANT CONTINENTAL GRAIN COMPANY, DEFENDANT BERGEN SHIPPING CO., LTD., ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS

TWENTY-SECOND: It repeats and reiterates as if herein set forth at length the allegations, denials and defenses set forth in paragraphs FIRST through FOURTEENTH of this pleading.

TWENTY-THIRD: The co-defendant, Continental Grain Company is a corporation organized and existing under and by virtue of the laws of one of the states of the United States with an office and principal place of business located at 277 Park Avenue, New York, New York.

TWENTY-FOURTH: On July 10-15, 1974, at the port of Philadelphia, co-defendant Continental Grain Company owned, supplied, shipped, delivered and loaded the aforesaid goods on board the M/V YUKONMART and at all material times operated and controlled the vessel as sub-charterer pursuant to the aforesaid charter party dated July 5, 1974.

TWENTY-FIFTH: If the shipment referred to in the complaint sustained any loss or damage as alleged in the complaint, which is denied, such loss or damage was not caused by any fault, negligence or breach of obligation on the part of this defendant or anyone for whom it is or was responsible.

TWENTY-SIXTH: If this defendant is found to be under any liability to the plaintiffs, which is denied, such liability could result only from the fault, negligence, act, omission

BERGEN'S ANSWER, ETC.

and/or breach of its contractual obligations of co-defendant Continental Grain Company, its agents, servants, representatives, and/or employees, as owner, supplier and shipper of the aforesaid goods and as sub-charterer of the M/V YUKONMART, and this defendant is entitled to be indemnified to the full extent of such liability, if any, by co-defendant Continental Grain Company, together with all costs, counsel fees, and disbursements incurred by this defendant in the defense of this complaint.

AS AND FOR ITS CROSS-CLAIM AGAINST CO-DEFENDANT CONTINENTAL GRAIN EXPORT CORPORATION, THE DEFENDANT BERGEN SHIPPING CO., LTD.,
ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS

TWENTY-SEVENTH: It repeats and reiterates as if herein set forth at length the allegations, denials and defenses set forth in paragraphs FIRST through FOURTEENTH of this pleading.

TWENTY-EIGHTH: Co-defendant Continental Grain Export Corporation is a corporation organized and existing under and by virtue of the laws of one of the states of the United States with a principal office and place of business located at 277 Park Avenue, New York, New York.

TWENTY-NINTH: On July 10-15, 1974, at the port of Philadelphia, co-defendant Continental Grain Export Corporation owned, sold, supplied, shipped, delivered and loaded the aforesaid goods on board the M/V YUKONMART.

THIRTIETH: If the shipment referred to in the complaint sustained any loss or damage as alleged in the complaint, which is denied, such loss or damage was not caused by any fault, negligence or breach of obligation on the part of this defendant or anyone for whom it is or was responsible.

THIRTY-FIRST: Accordingly, if this defendant is found to be under any liability to the plaintiffs, which is denied, such liability could result only from the fault, negligence, act, omission, and/or breach of its contractual obligations of co-defendant Continental Grain Export Corporation, its agents, servants,

BERGEN'S ANSWER, ETC.

representatives and/or employees, as owner, seller and shipper of the aforesaid goods and this defendant is entitled to be indemnified to the full extent of such liability, if any, by the co-defendant Continental Grain Export Corporation, together with all costs, counsel fees, and disbursements incurred by this defendant in the defense of this complaint.

WHEREFORE (1) The defendant, Bergen Shipping Co., Ltd., prays that the complaint be dismissed with costs; and

(2) That this Honorable Court will decree that the plaintiffs pay to the defendant, Bergen Shipping Co., Ltd., general average contributions and all other special charges and expenses as may be proved, together with interest and costs; and

(3) If this defendant, Bergen Shipping Co., Ltd., be held liable to plaintiffs to any extent, that this defendant have judgment on its cross-claims against defendants Continental Grain Company and/or Continental Grain Export Corporation, together with costs, counsel fees and disbursements incurred by this defendant in defending this action; and

(4) That the defendant, Bergen Shipping Co., Ltd., may have such other further and different relief as the justice of the cause may require.

Dated: New York, New York
December // , 1975

KIRLIN, CAMPBELL & KEATING
Attorneys for Defendant
Bergen Shipping Co., Ltd.

By David W. Martowski
David W. Martowski
120 Broadway
New York, New York 10005
(212) 732-5520

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BERGEN'S ANSWER, ETC.

To: DONOVAN, DONOVAN, MALOOF & WALSH
Attorneys for Plaintiffs
161 William Street
New York, New York 10038

SYMMERS, FISH & WARNER
Attorneys for Defendant
Continental Grain Company
345 Park Avenue
New York, New York 10022

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN
Attorneys for Defendant
Continental Grain Export Corporation
96 Fulton Street
New York, New York 10038

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BREDA'S ANSWER, ETC.

which has an office and place of business located at 711 Third Avenue, New York, New York 10017, and that said defendant was engaged in business as a carrier of merchandise by water for hire and time-chartered and operated the M/V YUKONMART as a carrier of merchandise by water for hire.

At the times mentioned in the complaint, the vessel was being operated pursuant to the terms and conditions of a New York Produce Exchange Time Charter dated May 24, 1974, between co-defendant Bergen Shipping Co., Ltd., and defendant Breda Shipping Co., Ltd., and pursuant to the terms and conditions of a Baltimore Berth Grain Charter Party (Form C) dated July 5, 1974, between defendant Breda Shipping Co., Ltd., and co-defendant Continental Grain Company.

Except as so admitted, it denies the other allegations set forth in the THIRD paragraph of the complaint.

FOURTH: It admits that at the times mentioned in the complaint the M/V YUKONMART was a ship employed in the carriage of merchandise by water for hire.

Except as so admitted, it denies the other allegations set forth in the FOURTH paragraph of the complaint.

FIFTH: It admits that on or about July 15, 1974, at the port of Philadelphia, co-defendants Continental Grain Company and Continental Grain Export Corporation shipped and delivered to the M/V YUKONMART and to the defendant Breda Shipping Co., Ltd., 26,670 kilos of corn in bulk, quality and condition unknown, for transportation to and delivery at the port of Callao in accordance with the terms of the charter and hire paid and also in consideration of certain freights paid or agreed to be paid to co-defendants and in accordance with the terms and conditions of a bill of lading.

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BREDA'S ANSWER, ETC.

Except as so admitted, it denies the other allegations set forth in the FIFTH paragraph of the complaint.

SIXTH: It admits that thereafter the M/V YUKONMART arrived at the port of Callao where it and the defendant, Breda Shipping Co., Ltd., made delivery of the aforesaid cargo in accordance with the terms and conditions of the aforesaid bill of lading and charter party contracts.

Except as so admitted, it denies the other allegations set forth in the SIXTH paragraph of the complaint.

SEVENTH: It denies that it has knowledge or information sufficient to form a belief as to the allegations set forth in the SEVENTH paragraph of the complaint.

EIGHTH: It admits that a demand has been made for the payment of a sum of money, no part of which has been paid.

Except as so admitted, it denies the other allegations set forth in the EIGHTH paragraph of the complaint.

FIRST DEFENSE

NINTH: This defendant puts plaintiffs to their proof of compliance with the provisions for the giving of notice as provided for in the aforementioned bill of lading and in the United States Carriage of Goods by Sea Act, 1936, 46 U.S.C.A. 1300 et seq.

SECOND DEFENSE

TENTH: (1) Due diligence was used to make the vessel seaworthy and to secure that it was properly manned, equipped and supplied, and to make the holds and all other parts of the vessel in which goods were carried safe and fit for their reception, carriage and preservation in accordance with the provisions

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BREDA'S ANSWER, ETC.

of the aforementioned bill of lading and the United States Carriage of Goods by Sea Act, 1936.

(2) Accordingly, if the goods referred to in the complaint sustained any loss or damage while they were in the possession or custody of this defendant or on board the M/V YUKONMART due to any unseaworthiness of the vessel, which is denied, this defendant is not under any liability therefor.

THIRD DEFENSE

ELEVENTH: The goods were loaded and carried pursuant to the terms and conditions of the aforementioned bill of lading which was issued pursuant to the aforesaid charter party contracts and which was accepted by the shipper and consignee and which constituted the contract of carriage and which was subject to the United States Carriage of Goods by Sea Act, 1936. Accordingly, if the goods mentioned in the complaint sustained any loss or damage while in the custody of the vessel or this defendant, which is denied, this defendant claims all the rights, defenses, and immunities provided by the United States Carriage of Goods by Sea Act, 1936, the aforesaid bill of lading and charter parties which proof may show to be applicable.

FOURTH DEFENSE

TWELFTH: If the aforesaid goods sustained any loss or damage as alleged in the complaint, which is denied, and if any such loss or damage was caused by the act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, or by perils, dangers or accidents of the sea or other navigable waters, or by the arrest or restraint of princes, rulers or people, or seizure under

BREDAS ANSWER, ETC.

legal process, or by quarantine restriction, or by the act or omission of the shipper or owner of the goods, his agent or representative, or by the wastage in bulk or weight, or by strikes, lockouts or stoppages or restraint of labor from whatever cause, whether partial or general, or any other loss or damage arising from inherent defect, quality or vice of the goods, or by insufficiency of packing or latent condition not discoverable by the exercise of due diligence, or any other cause arising without the fault or privity of the carrier and without the fault or neglect of the servants or agents of this defendant, or those for whom it was responsible, this defendant is not under any liability therefor.

FIFTH DEFENSE

THIRTEENTH: In the event this defendant or the vessel should be under any liability for loss or damage to the aforesaid goods, which is denied, such recovery must be computed in accordance with the terms of the bill of lading and/or the provisions of the United States Carriage of Goods by Sea Act, 1936.

SIXTH DEFENSE

FOURTEENTH: If there was any loss or damage to the aforesaid goods, which is denied, said loss or damage was caused by the negligent, unreasonable and wrongful refusal by the plaintiffs, their representatives, agents, servants and/or employees, to promptly discharge the vessel upon her arrival and tender at Callao and said parties' failure to properly care for the aforesaid goods after their discharge and delivery at Callao.

BREDA'S ANSWER, ETC.

AS AND FOR ITS COUNTER-CLAIM AGAINST PLAINTIFFS, DEFENDANT BREDA SHIPPING CO., LTD., ALLEGES ON INFORMATION AND BELIEF, AS FOLLOWS

FIFTEENTH: It repeats and reiterates as if herein set forth at length the allegations, denials and defenses set forth in paragraphs FIRST through FOURTEENTH of this pleading.

SIXTEENTH: On or about September 17, 1974, the M/V YUKONMART arrived at the port of Callao where this defendant properly tendered the vessel and her cargo to plaintiffs for discharge and delivery.

SEVENTEENTH: Plaintiffs, their representatives, agents, servants and/or employees negligently, unreasonably and wrongfully refused to discharge said vessel until on or about October 2, 1974, and said unreasonable and wrongful delay and detention to the vessel caused this defendant to sustain damages in the way of loss of employment, bunkers, and other related expenses amounting \$250,000, with interest, as nearly as can be presently estimated.

AS FOR ITS FIRST CROSS-CLAIM AGAINST CO-DEFENDANT CONTINENTAL GRAIN COMPANY, DEFENDANT BREDA SHIPPING CO., LTD., ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS

EIGHTEENTH: It repeats and reiterates as if herein set forth at length the allegations, denials and defenses set forth in paragraphs FIRST through FOURTEENTH of this pleading.

NINETEENTH: The co-defendant, Continental Grain Company is a corporation organized and existing under and by virtue of the laws of one of the states of the United States with an office and principal place of business located at 277 Park Avenue, New York, New York.

TWENTIETH: On July 10-15, 1974, at the port of Philadelphia, co-defendant Continental Grain Company owned, supplied, shipped, delivered and loaded the aforesaid goods on board the

BREDA'S ANSWER, ETC.

M/V YUKONMART and at all material times operated and controlled the vessel as sub-charterer pursuant to the aforesaid charter party dated July 5, 1974.

TWENTY-FIRST: If the shipment referred to in the complaint sustained any loss or damage as alleged in the complaint, which is denied, such loss or damage was not caused by any fault, negligence or breach of obligation on the part of this defendant or anyone for whom it is or was responsible.

TWENTY-SECOND: If this defendant is found to be under any liability to the plaintiffs, which is denied, such liability could result only from the fault, negligence, act, omission and/or breach of its contractual obligations of co-defendant Continental Grain Company, its agents, servant, representatives, and/or employees, as owner, supplier and shipper of the aforesaid goods and as sub-charterer of the M/V YUKONMART, and this defendant is entitled to be indemnified to the full extent of such liability, if any, by co-defendant Continental Grain Company, together with all costs, counsel fees, and disbursements incurred by this defendant in the defense of this complaint.

AS AND FOR ITS SECOND CROSS-CLAIM AGAINST CO-DEFENDANT CONTINENTAL GRAIN COMPANY, DEFENDANT BREDA SHIPPING CO., LTD., ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS

TWENTY-THIRD: It repeats and reiterates as if herein set forth at length the allegations, denials and defenses and cross-claim set forth in paragraphs FIRST through FOURTEENTH and EIGHTEENTH through TWENTY-SECOND of this pleading.

TWENTY-FOURTH: At all material times the M/V YUKONMART was operating under the terms and conditions of a Baltimore Berth Charter Party (Form C) dated July 5, 1974, between defendant Breda Shipping Co., Ltd., and co-defendant Continental Grain Company pursuant to which said co-defendant agreed to pay to defendant Breda Shipping Co., Ltd., all freight, dead freight, and demurrage incurred during the voyage.

BREDA'S ANSWER, ETC.

TWENTY-FIFTH: During the aforesaid voyage from Philadelphia to Callao, demurrage was incurred in the amount of \$150,000, as nearly as can be estimated, no part of which has been paid by co-defendant, Continental Grain Company, although duly demanded. The Defendant Breda Shipping Co., Ltd., reserves its right to arbitrate said claim pursuant to the aforesaid charter party contract.

AS AND FOR ITS CROSS-CLAIM AGAINST CO-DEFENDANT CONTINENTAL GRAIN EXPORT CORPORATION, THE DEFENDANT BREDA SHIPPING CO., LTD.,
ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS

TWENTY-SIXTH: It repeats and reiterates as if herein set forth at length the allegations, denials and defenses set forth in paragraphs FIRST through FOURTEENTH of this pleading.

TWENTY-SEVENTH: Co-defendant Continental Grain Export Corporation is a corporation organized and existing under and by virtue of the laws of one of the states of the United States with a principal office and place of business located at 277 Park Avenue, New York, New York.

TWENTY-EIGHTH: On July 10-15, 1974, at the port of Philadelphia, co-defendant Continental Grain Export Corporation owned, sold, supplied, shipped, delivered and loaded the aforesaid goods on board the M/V YUKONMART.

TWENTY-NINTH: If the shipment referred to in the complaint sustained any loss or damage as alleged in the complaint, which is denied, such loss or damage was not caused by any fault, negligence or breach of obligation on the part of this defendant or anyone for whom it is or was responsible.

THIRTIETH: Accordingly, if this defendant is found to be under any liability to the plaintiffs, which is denied, such liability could result only from the fault, negligence, act, omission, and/or breach of its contractual obligations of co-defendant Continental Grain Export Corporation, its agents,

BREDAS ANSWER, ETC.

servants, representatives and/or employees, as owner, seller and shipper of the aforesaid goods and this defendant is entitled to be indemnified to the full extent of such liability, if any, by the co-defendant Continental Grain Export Corporation, together with all costs, counsel fees, and disbursements incurred by this defendant in the defense of this complaint.

WHEREFORE: (1) The defendant Breda Shipping Co., Ltd., prays that the complaint be dismissed with costs; and

(2) That this Honorable Court will decree that the plaintiffs pay to the defendant Breda Shipping Co., Ltd., damages in the way of loss of employment, bunkers, and other expenses as may be proved resulting from the wrongful delay and detention of said vessel, together with interests and costs; and

(3) If this defendant, Breda Shipping Co., Ltd., be held liable to plaintiffs to any extent, that this defendant have judgment on its cross-claims for indemnity against defendants Continental Grain Company and/or Continental Grain Export Corporation together with costs, counsel fees and disbursements incurred by this defendant in defending this action; and

(4) That this Honorable Court will decree that the defendant Continental Grain Company pay to the defendant Breda Shipping Co., Ltd., demurrage as may be proved together with interest and costs; and

(5) That the defendant Breda Shipping Co., Ltd., may have such other further and different relief as the justice of the cause may require.

Dated: New York, New York
December 11, 1975

KIRLIN, CAMPBELL & KEATING
Attorneys for Defendant
Breda Shipping Co., Ltd.

David W. Martin

120 Broadway
New York, New York 10005
(212) 732-5520

71a

BREDA'S ANSWER, ETC.

TO: DONOVAN, DONOVAN, MALOOF & WALSH
Attorneys for Plaintiffs
161 William Street
New York, New York 10039

SYMMERS, FISH & WARNER
Attorneys for Defendant
Continental Grain Company
345 Park Avenue
New York, New York 10022

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN
Attorneys for Defendant
Continental Grain Export Corporation
96 Fulton Street
New York, New York 10038

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

EMPRESA PUBLICA DE COMERCIALIZACION	:	
DE HARINA Y ACEITE DE PESCADO, and	:	75 Civil 4511 (RO)
EMPRESA PUBLICA DE SERVICIOS	:	
AGROPECUARIOS,	:	AFFIDAVIT ON BEHALF
	:	OF BERGEN SHIPPING
Plaintiffs,	:	CO., LTD., ET ANO IN
	:	OPPOSITION TO THE
-against-	:	TWO MOTIONS OF CO-
	:	DEFENDANTS CONTINEN-
SS YUKON MART, her engines, boilers, etc.,	:	TAL GRAIN COMPANY,
BERGEN SHIPPING CO., LTD., BRED A SHIPPING	:	AND CONTINENTAL GRAIN
CO., LTD., CONTINENTAL GRAIN COMPANY, and	:	EXPORT CORPORATION
CONTINENTAL GRAIN EXPORT CORPORATION,	:	FOR A STAY PENDING
	:	<u>ARBITRATION.</u>
Defendants.	:	

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DAVID W. MARTOWSKI, being duly sworn deposes and says:

1. I am an attorney and a member of the firm of Kirlin, Campbell & Keating, attorneys for the defendants Bergen Shipping Co., Ltd., and Breda Shipping Co., Ltd., and am familiar with this action.

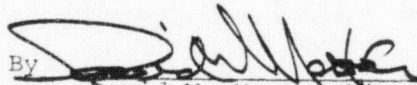
2. The defendants Bergen Shipping Co., Ltd., and Breda Shipping Co., Ltd., filed their Answers, Counter-Claims and Cross-Claims in this matter on December 11, 1975, including cross-claims against the co-defendants Continental Grain Company and Continental Grain Export Corporation. It is anticipated that one or both of said co-defendants may move to stay the aforesaid Cross-Claims pending arbitration and, therefore, this Court's determination of the pending motions by the co-defendants to stay the plaintiffs may be urged in support of or in opposition to such anticipated motions.

MARTOWSKI'S AFFIDAVIT IN OPPOSITION TO MOTION
ON BEHALF OF BERGEN AND BRED A

3. I have read the Affidavit and Memorandum of Law submitted by attorneys for the plaintiffs and agree with the reasons stated therein and join in their opposition to the motions of the co-defendants Continental Grain Company and Continental Grain Export Corporation seeking a stay of these proceedings pending arbitration.

The defendants Bergen Shipping Co., Ltd., and Breda Shipping Co., Ltd., respectfully request that this Court deny the motions of co-defendants Continental Grain Company and Continental Grain Export Corporation for an order to stay proceedings pending arbitration.

Respectfully,

By 
David W. Martowski

Sworn to before me this 30th
day of December , 1975
AT N.Y.C., N.Y.

Notary Public
NICHOLAS J. MALOOF
Notary Public, State of New York
No. 31-4517276
Qualified in New York County
Commission Expires March 30, 1976

To: SYMMERS, FISH & WARNER
Attorneys for Defendant
Continental Grain Company
345 Park Avenue
New York, New York 10022

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN
Attorneys for Defendant
Continental Grain Export Corporation
96 Fulton Street
New York, New York 10038

DONOVAN, DONOVAN, MALOOF & WALSH
Attorneys for Plaintiffs
161 William Street
New York, New York 10038

EXPORT'S ANSWER TO CROSS-CLAIM OF BRED A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -X
:
EMPRESA PUBLICA DE COMERCIALIZACION :
DE HARINA Y ACEITE DE PESCADO and :
EMPRESA PUBLICA DE SERVICIOS :
AGROPECUARIOS, : ANSWER TO
:
Plaintiffs, : CROSS-CLAIM
:
-against- : 75 Civ. 4511 (RO)
:
S.S. YUKON MART, her engines, :
boilers, etc.; BERGEN SHIPPING :
CO. LTD.; BRED A SHIPPING CO. LTD.; :
CONTINENTAL GRAIN COMPANY and :
CONTINENTAL GRAIN EXPORT :
CORPORATION, :
:
Defendants. :
:
- - - - -X

CONTINENTAL GRAIN EXPORT CORPORATION (herein-
after referred to as "EXPORT"), answering the cross-claim of
defendant, BRED A SHIPPING CO. LTD. (hereinafter referred to
as "BRED A"), alleges upon information and belief as follows:

FIRST: Defendant, Export, denies each and
every allegation contained in Paragraph "FIRST" of defendant,
Breda's, answer and cross-claim insofar as it concerns
defendant, Export.

SECOND: Defendant, Export, denies knowledge
and information sufficient to form a belief as to Paragraph
"SECOND".

THIRD: Defendant, Export, admits that at the
times mentioned in the complaint defendant, Breda, has an
agent, Atlas Navigation Corporation, of 711 Third Avenue,
New York, New York, and was engaged in the business as a

EXPORT'S ANSWER TO CROSS-CLAIM OF BRED A

carrier of merchandise by water for hire and operated the S.S. YUKON MART. Except as so admitted, defendant, Export, denies knowledge and information sufficient to form a belief as to each and every other allegation contained in Paragraph "THIRD" of the answer and cross-claim of defendant, Breda.

FOURTH: Defendant, Export, admits that the S.S. YUKON MART was the vessel employed in the carriage of merchandise by water for hire and, except as so admitted, denies knowledge and information sufficient to form a belief as to the allegation contained in Paragraph "FOURTH" of the answer and cross-claim of defendant, Breda.

FIFTH: Defendant, Export, admits that there was delivered to the S.S. YUKON MART at the port of Philadelphia a shipment of 26,670 kgs. of corn in bulk for transportation to the port of Callao in consideration of freight paid or agreed to be paid and, except as so admitted, denies knowledge and information sufficient to form a belief as to each and every other allegation contained in Paragraph "FIFTH" of the answer and cross-claim of defendant, Breda.

SIXTH: Defendant, Export, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "SIXTH" of the answer and cross-claim of defendant, Breda.

SEVENTH: Defendant, Export, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "SEVENTH" of the answer and cross-claim of defendant, Breda.

EXPORT'S ANSWER TO CROSS-CLAIM OF BRED A

EIGHTH: Defendant, Export, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "EIGHTH" of the answer and cross-claim of defendant, Breda.

NINTH: Defendant, Export, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "NINTH" of the answer and cross-claim of defendant, Breda.

TENTH: Defendant, Export, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "TENTH" of the answer and cross-claim of defendant, Breda.

ELEVENTH: Defendant, Export, admits that a bill of lading was issued pursuant to a charter party contract entered into between defendant, Breda, and defendant, Continental Grain Company, dated July 5, 1974, for the shipment of corn hereinbefore described in Paragraph "FIFTH" of defendant, Breda's, answer and cross-claim and, except as so admitted, denies knowledge and information sufficient to form a belief as to each and every other allegation contained in Paragraph "ELEVENTH" of the answer and cross-claim of defendant, Breda.

TWELFTH: Defendant, Export, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "TWELFTH" of the answer and cross-claim of defendant, Breda.

EXPORT'S ANSWER TO CROSS-CLAIM OF BREDA

THIRTEENTH: Defendant, Export, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "THIRTEENTH" of the answer and cross-claim of defendant, Breda.

FOURTEENTH: Defendant, Export, admits the allegations contained in Paragraph "FOURTEENTH" of the answer and cross-claim of defendant, Breda.

FIFTEENTH: Answering Paragraph "TWENTY-SEVENTH" of the answer and cross-claim of defendant, Breda, defendant, Export, repeats and realleges each and every admission or denial upon information and belief contained in Paragraphs "FIRST" through "FOURTEENTH" hereof with the same force and effect as if the same had been set forth at length herein.

SIXTEENTH: Defendant, Export, admits that it is a corporation organized and existing under and by virtue of the laws of the State of Delaware and that it has an office and place of business at 277 Park Avenue, New York, New York, and, except as so admitted, denies each and every other allegation contained in Paragraph "TWENTY-SEVENTH" of the answer and cross-claim of defendant, Breda.

SEVENTEENTH: Defendant, Export, admits that it entered into a contract with plaintiff, Empresa Publica de Servicios Agropecuarios, to sell to said plaintiff a shipment of corn hereinbefore described in Paragraph "FIFTH" hereof on the terms C&F Callao. This shipment was carried by the S.S. YUKON MART from Philadelphia to Callao. Except as so admitted, defendant, Export, denies each and every other allegation contained in Paragraph "TWENTY-EIGHTH" of the answer and cross-claim of defendant, Breda.

EXPORT'S ANSWER TO CROSS-CLAIM OF BREDA

EIGHTEENTH: Defendant, Export, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "TWENTY-NINTH" of the answer and cross-claim of defendant, Breda.

NINETEENTH: Defendant, Export, denies each and every allegation contained in Paragraph "THIRTIETH" of the answer and cross-claim of defendant, Breda.

WHEREFORE, defendant, Export, prays that the cross-complaint of defendant, Breda Shipping Co. Ltd., be dismissed, together with costs, and that this Court grant such other and further relief as may seem just and equitable under the circumstances.

Dated: New York, New York
December 30, 1975

HILL RIVKINS CAREY LOESBERG & O'BRIEN
Attorneys for Defendant,
Continental Grain Export Corporation

By: _____

A Member of the Firm

96 Fulton Street
New York, New York 10038
233-6171

TO:

KIRLIN, CAMPBELL & KEATING
Attorneys for Defendants,
Breda Shipping Co. Ltd. and
Bergen Shipping Co. Ltd.
120 Broadway
New York, New York 10005

SYMMERS, FISH & WARNER
Attorneys for Defendant
Continental Grain Company
345 Park Avenue
New York, New York 10022

DONOVAN, DONOVAN, MALOOF & WALSH
Attorneys for Plaintiffs
161 William Street
New York, New York 10038

EXPORT'S ANSWER TO CROSS-CLAIM OF BERGEN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
EMPRESA PUBLICA DE COMERCIALIZACION
DE HARINA Y ACEITE DE PESCADO and :
EMPRESA PUBLICA DE SERVICIOS :
AGROPECUARIOS, :
:
Plaintiffs, : ANSWER TO
:
-against- : CROSS-CLAIM
:
S.S. YUKON MART, her engines, : 75 Civ. 4511 (RO)
boilers, etc.; BERGEN SHIPPING CO. :
LTD.; BREDAS SHIPPING CO. LTD.; :
CONTINENTAL GRAIN COMPANY and :
CONTINENTAL GRAIN EXPORT :
CORPORATION, :
:
Defendants. :
----- -x

CONTINENTAL GRAIN EXPORT CORPORATION (hereinafter referred to as "EXPORT"), answering the cross-claim of defendant, Bergen Shipping Co. Ltd. (hereinafter referred to as "BERGEN"), alleges upon information and belief as follows:

FIRST: Defendant, Export, denies each and every allegation contained in Paragraph "FIRST" of the answer and cross-claim of defendant, Bergen, insofar as it concerns defendant, Export.

SECOND: Defendant, Export, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "SECOND".

THIRD: Defendant, Export, admits that at the times mentioned in the complaint defendant, Bergen, has an agent, Atlas Navigation Corporation, of 711 Third Avenue,

EXPORT'S ANSWER TO CROSS-CLAIM OF BERGEN

New York, New York, and was engaged in the business as a carrier of merchandise by water for hire and operated the S.S. YUKON MART. Except as so admitted, defendant, Export, denies knowledge and information sufficient to form a belief as to each and every other allegation contained in Paragraph "THIRD" of the answer and cross-claim of defendant, Bergen.

FOURTH: Defendant, Export, admits that the S.S. YUKON MART was the vessel employed in the carriage of merchandise by water for hire and, except as so admitted, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "FOURTH" of the answer and cross-claim of defendant, Bergen.

FIFTH: Defendant, Export, admits that there was delivered to the S.S. YUKON MART at the port of Philadelphia a shipment of 26,670 kgs. of corn in bulk for transportation to the port of Callao in consideration of freight paid or agreed to be paid and, except as so admitted, denies knowledge and information sufficient to form a belief as to each and every other allegation contained in Paragraph "FIFTH" of the answer and cross-claim of defendant, Bergen.

SIXTH: Defendant, Export, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "SIXTH" of the answer and cross-claim of defendant, Bergen.

SEVENTH: Defendant, Export, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "SEVENTH" of the answer and cross-claim of defendant, Bergen.

EXPORT'S ANSWER TO CROSS-CLAIM OF BERGEN

EIGHTH: Defendant, Export, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "EIGHTH" of the answer and cross-claim of defendant, Bergen.

NINTH: Defendant, Export, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "NINTH" of the answer and cross-claim of defendant, Bergen.

TENTH: Defendant, Export, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "TENTH" of the answer and cross-claim of defendant, Bergen.

ELEVENTH: Defendant, Export, admits that a bill of lading was issued pursuant to a charter party contract entered into between defendant, Breda, and defendant, Continental Grain Company, dated July 5, 1974, for the shipment of corn hereinbefore described in Paragraph "FIFTH" of the answer and cross-claim of defendant, Bergen, and, except as so admitted, denies knowledge and information sufficient to form a belief as to each and every other allegation contained in Paragraph "ELEVENTH" of the answer and cross-claim of defendant, Bergen.

TWELFTH: Defendant, Export, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "TWELFTH" of the answer and cross-claim of defendant, Bergen.

THIRTEENTH: Defendant, Export, denies knowledge and information sufficient to form a belief as to

EXPORT'S ANSWER TO CROSS-CLAIM OF BERGEN

the allegations contained in Paragraph "THIRTEENTH" of the answer and cross-claim of defendant, Bergen.

FOURTEENTH: Defendant, Export, admits the allegations contained in Paragraph "FOURTEENTH" of the answer and cross-claim of defendant, Bergen.

FIFTEENTH: Answering Paragraph "TWENTY-SIXTH" of the answer and cross-claim of defendant, Bergen, defendant, Export, repeats and realleges each and every admission or denial upon information and belief contained in Paragraphs "FIRST" through "FOURTEENTH" hereof with the same force and effect as if the same had been set forth at length herein.

SIXTEENTH: Defendant, Export, admits that it is a corporation organized and existing under and by virtue of the laws of the State of Delaware and that it has an office and place of business at 277 Park Avenue, New York, New York, and, except as so admitted, denies each and every other allegation contained in Paragraph "TWENTY-EIGHTH" of the answer and cross-claim of defendant, Bergen.

SEVENTEENTH: Defendant, Export, admits that it entered into a contract with plaintiff, Empresa Publica de Servicios Agropecuarios, to sell to said plaintiff a shipment of corn hereinbefore described in Paragraph "FIFTH" hereof on the terms C&F Callao. This shipment was carried by the S.S. YUKON MART from Philadelphia to Callao. Except as so admitted, defendant, Export, denies each and every other allegation contained in Paragraph "TWENTY-NINTH" of the answer and cross-claim of defendant, Bergen.

EXPORT'S ANSWER TO CROSS-CLAIM OF BERGEN

EIGHTEENTH: Defendant, Export, denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "THIRTIETH" of the answer and cross-claim of defendant, Bergen.

NINETEENTH: Defendant, Export, denies each and every allegation contained in Paragraph "THIRTY-FIRST" of the answer and cross-claim of defendant, Bergen.

WHEREFORE, defendant, Export, prays that the cross-complaint of defendant, Bergen Shipping Co. Ltd., be dismissed, together with costs, and that this Court grant such other and further relief as may seem just and equitable under the circumstances.

Dated: New York, New York
December 30, 1975

HILL RIVKINS CAREY LOESBERG & O'BRIEN
Attorneys for Defendant,
Continental Grain Export Corporation

By: [Signature]
A Member of the Firm
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THE GRAIN AND FEED TRADE ASSOCIATION

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LIMITED

BALTIK EXCHANGE CHAMBERS, 28 ST. MARY AXE, LONDON, EC3A 8LP

(Affiliated to the London Chamber of Commerce)

CONTRACT FOR CANADIAN AND UNITED STATES OF AMERICA GRAIN
PARCELS
TO CONTINENT
TALE QUALE

LONDON

No. 30

Copyright

Bought of
Sold to

on the printed conditions and rules endorsed on this contract.

1. QUALITY—

★official

certificate of inspection to be final as to quality.

On Sales of Canadian produce Sellers have the option of delivering the Official Inspection Canadian Certificate issued in the United States.

★AMERICAN CORN—Official

certificate(s) of inspection

at time of loading into the ocean carrying vessel to be final as to quality

The Buyer under this Contract shall not be entitled to reject a tender of a higher grade of Grain of the same colour and description.

★at time and place of shipment about as per sealed sample marked

in possession of

the word "about" shall mean the equivalent of one-half of one per cent. on contract price.

Difference in quality shall not entitle the Buyer to reject, except under the award of Arbitrators, Umpire or Court of Appeal (as the case may be), referred to in the Arbitration Rules specified in the Arbitration Clause hereafter appearing.

The grain is not warranted free from defect, rendering the same unmerchantable, which would not be apparent on reasonable examination, any statute or rule of law to the contrary notwithstanding.

Shipment in good condition.

Should the grain arrive out of condition, due allowance shall be made for the time of year in which the shipment took place. The fact of the grain so arriving shall not necessarily be sufficient proof of an improper shipment.

2. SHIP'S CLASSIFICATION—Per first class Steamer or Steamers and or Power-Driven Ship or Ships (excluding Tankers and Vessels which are either classified in Lloyd's Register or described in Lloyd's Shipping Index as "Dry Oil" Vessel) classed not lower than 100 A.1. or British Corporation B.S., or top classification in American, French, Italian, Norwegian or other equal Register, or ships not inferior to these classifications.

3. PORTS OF SHIPMENT—From a United States and or Canadian Port or Ports, including Lake Ports and Hudson River not above Albany, but excluding Pacific and Hudson Bay Ports.

4. SHIPMENT—As per Bill or Bills of Lading dated, or to be dated.

The Bill of Lading to be dated when the goods covered by same are actually on board.

In any month containing an odd number of days the middle day shall be reckoned as belonging to both halves of the month.

5. QUANTITY—

say

2 per cent. more or less.

Seller has the option of shipping a further 3 per cent. more or less on contract quantity, excess or deficiency over the above 2 per cent. to be settled at the c. f. & l. price on date of Bill of Lading, and on the quantity thereof, value to be fixed by Arbitration unless mutually agreed. Damage not to be considered in the quantity deliverable under this contract.

6. CONVERSION—For the purpose of this Contract 2,240 lbs. shall be considered as being equivalent to 1,016 kilos.

7. PRICE—At the price of

say

per

8. DESTINATION—Including Freight and Insurance to

direct or indirect

as per a customary Bill of Lading.

9. FREIGHT—Freight payable on discharge, less advances for the ordinary ship's disbursements at Port of Loading.

10. BROKERAGE—

by paid by Sellers on the mean contract quantity, goods lost or not lost, contract fulfilled or not fulfilled, unless such non-fulfilment is due to the successful application of the Prohibition Clause. Brokerage shall be due on the day shipping documents are exchanged or if the goods are not appropriated then the Brokerage shall be due on the 30th consecutive day after the last day for appropriation or advice of shipment.

11. PAYMENT—Payment, cash in

in exchange for Shipping Documents

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If Shipping documents have not been sighted at time of ship's arrival at port of discharge, Seller must provide other documents entitling Buyer to obtain delivery of the grain and, without prejudice to Buyer's rights under the contract, payment must be made in exchange for same, provided that, if such payment be made, landing charges, if any, incurred by reason of such non-sighting of documents shall be borne by Seller and allowed for in final invoice. Should Documents be presented with incomplete set of Bill of Lading attached, payment shall be made, provided the delivery of the remaining Bill of Lading in due course be guaranteed by approved bankers. No obviously clerical error in the documents shall entitle the Buyer to reject them or delay payment, but Seller shall be responsible for all loss or expense caused to Buyer by reason of such error, and Seller shall on request of Buyer furnish an approved guarantee in respect thereof.

ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORTS MOTION

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20. STRIKE CLAUSE—

1. Should shipment of the goods or any part thereof be prevented at any time during the last 28 days of guaranteed time of shipment, or at any time during guaranteed contract period if such be less than 28 days, by reason of riots, strikes or lock-outs at port or port, of loading, or elsewhere preventing the forwarding of the goods to such port or ports, or by reason of riots, strikes or lock-outs in the Great Lakes or the St. Lawrence River preventing the proceeding of the vessel to Great Lakes or St. Lawrence port or ports of loading, then Shipper shall be entitled at the resumption of work after termination of such riots, strikes or lock-outs to as much time, not exceeding 28 days, for shipment from such port or ports as was left for shipment under the contract prior to the outbreak of the riots, strikes or lock-outs, and in the event of the time left for shipment under the contract being 14 days or less, a minimum extension of 14 days shall be allowed. In the event of further riots, strikes or lock-outs occurring during the time by which the guaranteed time of shipment has been extended by reason of the operation of the provisions of the foregoing paragraph, the additional extension allowed shall be limited to the actual duration of such further riots, strikes or lock-outs. In case of non-shipment under above circumstances, and if Shipper has claimed an extension under paragraph 2 of this clause, the date of default shall be similarly deferred.

2. Shipper shall give notice by cable not later than 2 days (Sundays and holidays excepted) after the last day of guaranteed time of shipment, if he intends to claim an extension of time for shipment under paragraph 1. Such notice shall state the port or ports from which shipment was intended to be made and if such extension is claimed the shipment, after expiry of Contract period, shall only be made from such port or ports. All such notices shall be passed on in due course.

3. If the Shipper gives the notice above referred to he shall forthwith apply to the North American Export Grain Association and request them to cable to the Grain and Feed Trade Association, Ltd., confirming the existence of such riots, strikes or lock-outs and in due course to cable the dates of commencement and resumption of work after termination thereof. The Shipper further agrees to comply with all requirements of the North American Export Grain Association to ensure such cables being sent.

4. As soon as practicable, a certificate of the North American Export Grain Association confirming the information cabled as per paragraph 3 above and certifying the effective duration of the riots, strikes or lock-outs causing the delay and/or prevention of shipment shall be despatched to the Grain and Feed Trade Association, Ltd. This certificate or failing its receipt by the Grain and Feed Trade Association, Ltd., at time of negotiation of documents the above-mentioned cables shall be deemed to be final evidence of such riots, strikes or lock-outs on all contracts where Shipper has claimed extension as per paragraph 2 above.

21. WAR DEVIATION—Buyers agree to accept documents containing the Charter of Shipping War Deviation Clause and/or any other recognized Official War Risk Clause.

22. EXTENSION OF SHIPMENT—The period herein specified within which Bills of Lading must be dated shall be deemed to include an additional period of not to exceed eight days, when so desired by the Shipper, provided he gives his Buyer notice of his intention to claim additional days by cable sent not later than the business day following the last day included in the originally stipulated period for shipment, such notice shall be passed on by other Sellers to their Buyers respectively in due course after receipt. Such notice need not state the number of additional days claimed by the Seller and the Seller may ship at any time within eight additional days. The Seller, however, shall make an allowance to the Buyer, to be deducted in the invoice from the contract price, based on the number of days by which the originally stipulated period is exceeded, as follows:—For 1, 2, 3 or 4 additional days, 1 per cent. of the gross c.i.f. price. For 5 or 6 additional days 1 per cent. of the gross c.i.f. price. For 7 or 8 additional days, 1½ per cent. of the gross c.i.f. price.

If, however, after having given notice to the Buyer as above, the Seller fails to make shipment within such eight days, then the contract shall be deemed to have called for shipment during the originally stipulated period plus eight days, at contract price less 1½ per cent. and any settlement for default shall be calculated on that basis. If any allowance becomes due under this clause, the contract price shall be deemed to be the original contract price less the allowance and any other contractual differences shall be settled on the basis of such reduced price.

23. NOTICE OF APPROPRIATION—

1. (a) Notice of appropriation, specifying the ship's name, the date of the Bill Bills of Lading and the approximate quantity loaded shall be telegraphed by the Seller, if he be the Shipper of the grain to be appropriated under this contract, to his Buyer, either direct or through his House, Representative or Agent in Europe within 6 days from date of Bill of Lading. Should the Shipper's notice be delayed beyond the said 6 days through any cause beyond his control, the Shipper's European House, Representative or Agent shall pass on the notice to the Buyer in due course after receipt, but in no case later than 24 hours after arrival of the Shipping Documents in Europe.

In the event of tenders against a larger contract quantity being less than 50 tons totally in any one vessel, an allowance of one-half of one per cent. on contract price shall be deducted in the provisional invoice upon such tendered quantity.

(b) If the Seller is an intermediate Seller, he shall pass on the notice in writing to his Buyer within the said 6 days if received within that period and if it is practicable so to do, but if it is not practicable so to do or if the notice is not received within that period, he shall pass it on in due course after receipt.

(c) Any notice given by telegraph or in writing under paragraphs (a) and (b) above shall be deemed to be under reserve for error in the date's of the Bill Bills of Lading, provided always that the calendar month shall be correctly stated.

(d) If the Seller and his Buyer do not carry on business in the same town, a notice passed on after the said 6 days shall be passed on by telegraph and confirmed in writing on the same day.

(e) The Buyer, on receiving a notice of appropriation, shall, on demand, give a written receipt therefor, and if required, the Seller shall give to his Buyer a copy of the particulars contained in the notice received by him, and the time and date of its receipt.

(f) A valid notice of appropriation when once given or passed on shall not be withdrawn.

(g) A notice of appropriation given or passed on by telegraph shall be deemed to have been given or passed on under reserve for textual errors or delays in transmission.

(h) If the grain tendered is shipped from a Gulf port or a Lake port west of Montreal, the period "6 days" wherever occurring in this clause shall be deemed to read "7 days."

2. (a) Every notice of appropriation required by the preceding paragraphs of this rule to be given or passed on may be given or passed on by or to any broker or other duly authorised agent of either party to this contract.

(b) Every notice of appropriation received after 1600 hours on any business day shall be deemed to have been received on the business day next following.

24. PROOF OF SHIPMENT—Bill of Lading to be considered proof of date of shipment in the absence of evidence to the contrary. Each shipment appropriated in whole or part fulfilment of this contract to be considered a separate contract, but each Bill of Lading not to be considered a separate shipment except as to the date on which it can be appropriated. In the event of more than one shipment being made each shipment to be considered a separate contract, but the margin on the mean quantity sold not to be affected thereby.

25. NON-BUSINESS DAYS—Saturdays, Sundays and the days proclaimed as Bank or General holidays in England, and any days which the Grain and Feed Trade Association, Limited may declare as non-business days for specific purposes, and the officially recognised and/or legal holidays of the respective countries shall be non-business days.

Should the time limit for doing any act or giving any notice expire on a non-business day, the time so limited shall be extended until the first business day thereafter. The period of shipment shall not be affected by this clause.

26. DEFAULT—

(a) In Default of fulfilment of contract by either party, the other, at his discretion, shall, after giving notice in writing, have the right to sell or purchase, as the case may be, again the defaulter, who shall make good the loss, if any, on such sale or purchase. If the party liable to pay shall be disassociated with the price of such sale or purchase, or if the above right is not exercised, the damages, if any, payable by the party in default shall be settled by arbitration and such damages in the absence of special circumstances shall not exceed the difference between the contract price and the market price for its equivalent as found by the Arbitrators or the Court of Appeal on the day of default, and nothing contained in or implied under this contract shall entitle the Buyer to any damages in respect of any loss of profit suffered or liability incurred by him upon any sub-contract. Where, however, any special circumstances, in the opinion of the Arbitrators or Court of Appeal, exist, the latter may, in their or its sole and absolute discretion, award to the Buyer such

- sum in respect of loss of profit so suffered or liability so incurred as they or it shall think fit. In the event of default in shipment or delivery, any damages shall be computed upon the mean contract quantity.
- (b) Insolvency.—If before the fulfillment of this contract, either party shall suspend payments, commit an act of bankruptcy, notify any of his creditors that he is unable to meet debts or that he has suspended or that he is about to suspend payment of his debts, convene, call or hold a meeting of creditors, convene, call or hold a meeting to go into liquidation (other than for reconstruction or amalgamation) or shall apply for an official moratorium, have a petition presented for winding up, or shall have a Receiver appointed, the contract shall forthwith be closed, either at the market price then current for similar goods, or at the option of the other party, at a price to be ascertained by re-purchase or re-sale, and the difference between the contract price and the closing price shall be the amount payable or receivable under this contract.
27. **CIRCLE**—Where a seller repurchases from his buyer or from any subsequent buyer the same goods or part thereof, a circle shall be established as regards the particular goods so repurchased, and the provisions of the Default Clause shall not apply. Subject to the terms of the Prohibition Clause in the Contract, if the goods are not appropriated or having been appropriated documents are not presented the invoices based on the mean contract quantity shall be settled between each buyer and each seller in the circle by payment by each buyer to his seller of the excess of the seller's invoice amount over the lowest invoice amount in the circle. Such settlement to be made 30 days after the last day for appropriation. Should any party in the circle commit any act of insolvency as comprehended in the Default Clause, paragraph (b), the circle shall be considered to be broken, and the Default Clause shall apply.
28. **SAMPLING**—Samples shall be taken at time of discharge in accordance with the appropriate rules of the Grain and Feed Trade Association, and shall be the only samples used for the purposes of arbitration.
29. **NOTICES**—Any Notices received after 1600 hours on a business day shall be deemed to have been received on the business day following. A Notice to the Broker or Agent shall be deemed a Notice under this Contract. All Notices given under this Contract shall be given by letter or by telegram or by telex or by other means of rapid written communication. In case of telex all Notices shall be passed on without delay by Buyers to their respective Sellers or vice versa.
30. **SETTLEMENT CLAIMS**—Any monies due by either party to the contract to each other in respect to final invoices and or accounts for other items on shipments fulfilling this contract, shall be settled by either party without delay except as otherwise provided under Awards of Arbitration or Appeal as governed by the other provisions in the contract.
31. **FINALITY RULES ARBITRATION**—Every Arbitration claimed in accordance with the Arbitration Rules specified in the Arbitration Clause hereafter appearing, must be preceded with, if for—
 Quantity—when the sale has been a sale by sample, within 28 days of the date of the completion of final discharge of the ship at port of destination under this Contract.
 In the event of non-compliance with any of the preceding provisions of this rule, claims for quality shall be deemed to have been waived and absolutely barred, unless the Arbitrators, Umpire or Court of Appeal referred to in the Arbitration Rules, shall, in their absolute discretion, otherwise determine.
32. **DOMICILE AND SERVICE**—
 1. Buyer and Seller agree that, for the purpose of all proceedings, either legal or by arbitration, this contract shall be deemed to have been made in England, and to be performed there, any correspondence in reference to the offer, the acceptance or the place of payment or any other circumstances whatsoever notwithstanding.
 2. If either party hereto resides or carries on business elsewhere than in England or Wales, he shall nevertheless, for the purpose of all proceedings, either legal or by arbitration, be deemed to be ordinarily resident or carrying on business at the office of the Grain and Feed Trade Association. Further, if either party hereto resides or carries on business in Scotland, he shall be held to have prorogated jurisdiction against himself to the English Courts, or, if in Northern Ireland, to have submitted to the jurisdiction of and to be bound by the decision of the English Courts.
 3. The service of proceedings, either legal or by arbitration, upon any party to whom paragraph 2 of this clause applies, by leaving the same at the office of the Grain and Feed Trade Association together with the sending by post (whether ordinary or registered) of a copy thereof to his address outside England or Wales (if known), shall be deemed good service, any rule of law or equity to the contrary notwithstanding. Nothing contained in this paragraph shall exclude service of any such proceedings in any other manner which shall, by English law, constitute good service, the provisions hereof being optional in favour of the party seeking to effect service.
33. **ARBITRATION**—
 1. (a) All disputes from time to time arising out of or under this contract (including any question of law arising in connection therewith) shall be referred to arbitration in London in accordance with the Arbitration Rules specified in Form No. 125 of the Grain and Feed Trade Association, currently in force and referred to as "the Arbitration Rules".
 (b) The stipulation contained in subparagraph (a) hereof may be made a Rule of any of the divisions of Her Majesty's High Court of Justice in Northern Ireland on the application of either party hereto for the purpose of enforcing an award against the other party hereto if that other party is resident or carrying on business in Northern Ireland.
 2. Either party hereto, nor any persons claiming under either of them, shall bring any action or other legal proceedings against the other of them in respect of any such dispute until and unless they shall first have obtained an award from the arbitrators, umpire or Court of Appeal to the effect that in accordance with the Arbitration Rules specified in subparagraph 1 (a) above, and it is hereby expressly agreed and declared that the obtaining of an award from the arbitrators, umpire or Court of Appeal (as the case may be) shall be a condition precedent to the right of either party hereto or any person claiming under either of them to bring any action or other legal proceeding against the other of them in respect of any such dispute.
 3. This contract is governed by the law of England and accordingly all such disputes shall be heard and determined in accordance with the law of England wherever the domicile, residence or place of business of either of the parties hereto may in fact be or become.
34. **UNLIS CLAUSE**—The Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967, shall not apply to this contract.

THE GRAIN AND FEED TRADE ASSOCIATION



No. 125

Copyright

ARBITRATION RULES

PRELIMINARY

- 1.—(a) Any dispute arising out of a contract embodying these Rules (including any question of law arising in connection therewith) shall be referred to arbitration in London. Each party shall appoint an arbitrator and such arbitrators shall have the power, if and when they disagree, to appoint an umpire whose decision is to be final (subject only to appeal as hereinafter provided).
- (b) An arbitrator or an umpire appointed under these Rules shall either be a Member of the Association, or with the consent of his principals, an employee of a Member, but in either case he shall be a person engaged or who has been engaged in the trade and shall not be interested in the transaction nor directly interested as a member of a firm or a company named as a party to the arbitration.
- (c) An appointment shall be valid if the arbitrator has indicated his acceptance of the appointment and the claim has been despatched to the other party within the time limits laid down in these Rules.

APPOINTMENT OF ARBITRATORS/UMPIRES

- 2.—(a) Each party may appoint an arbitrator as provided in Rule 1.
- (b) Any party requiring an arbitrator to be appointed on his behalf may apply to the Association within the time limits stipulated in Rule 3. Any two of the Officers may, in their discretion, appoint an arbitrator to act for the party applying, provided that such application is addressed in writing to the Secretary General and provided that a copy has been despatched to the other party within the time limit laid down in Rule 3. Such appointment shall for the purposes of any time limit provided by these Rules be equivalent to the appointment of an arbitrator by the applicant.
- (c) If one party has appointed his arbitrator, despatched notice in writing of the appointment to the other party and called upon that party to appoint his arbitrator, and the party fails to comply within nine consecutive days of the notice being served (such notice to be despatched in accordance with Rule 3) then, either party may apply to the Association for the appointment of an arbitrator, to act on behalf of the party who has failed to appoint. Provided that the application is accompanied by evidence that (i) the parties had entered into a contract subject to these Rules, (ii) notice was despatched to the other party that arbitration was claimed and (iii) notice was despatched that application was being made to the Association for the appointment of an arbitrator, and the appropriate fee ruling at the date of application has been paid, any two of the Officers shall appoint an arbitrator to act on behalf of the party who failed to appoint an arbitrator to act on his behalf.
- (d) If an arbitrator dies or refuses to act or becomes incapable of acting or fails to proceed with the arbitration and a substitute is not appointed by the party for whom he was acting within five consecutive days after notice of such death, refusal, incapacity, or failure as the case may be, any two of the Officers shall have the power to appoint an arbitrator, provided that application is made in accordance with the second sentence of Rule 2(c).
- (e) If the arbitrators appointed fail to agree on the appointment of an umpire, any two of the Officers shall at the request of either arbitrator have the power to appoint an umpire, on payment of the appropriate fee ruling at the date of application.

All persons appointed under the provisions of this Rule shall be qualified to act as defined in Rule 1.

PROCEDURE FOR CLAIMING ARBITRATION AND TIME LIMITS

- 3.—(a) General
Notice of the intention to proceed to arbitration shall be despatched and an arbitrator appointed in writing by the party claiming arbitration as stated below, which notice shall be valid if passed on by the intermediate parties without undue delay.
- (b) Technical
 - (i) Within three calendar months of the expiry of the contract time of shipment or of the date of completion of final discharge of the ship at port of destination, whichever period shall last expire.
 - (ii) In respect of final invoices within 24 consecutive days of the dispute having arisen.
- (c) Quality
 - (i) For Grain, Cereal Products, Pulses etc., Contracts numbers: 2, 3, 5, 7, 11, 11a, 12, 13, 14, 14a, 16, 19, 26, 27, 28, 30, 31, 32, 35, 36, 41, 43, 48, 49, 50, 51, 53, 54a, 59, 60, 61, 62, 64, 74, 74a, 75, 77, 79, 79a, 80, 83, 84, 85.
 - (ii) When the sale has been a sale by sample, within 10 consecutive days of the date of completion of final discharge of the ship at port of destination.
 - (iii) When the sale has been of fair average quality to be assessed upon the basis of and by comparison with the Association's official F.A.Q. Standard of the month during which the Bill of Lading is dated, within 10 consecutive days of the publication in the Trade Lists that the Standard has been, or will not be, made.
 - (iii) When the sale has been of fair average quality against a Standard which is officially adopted by the Association, within 10 consecutive days of the completion of final discharge of the ship at port of destination or within 10 consecutive days of the publication in the Trade Lists that the Standard has been, or will not be, adopted, whichever period shall last expire.
- (d) Condition
Where the goods have been bought and sold on terms known as "Rye Terms," within 10 consecutive days of the date of completion of final discharge of the ship at port of destination.
- (e) Quality and Condition
For Protein Feeding stuffs, Contracts numbers: 1, 4, 6, 8, 9, 10, 15, 17, 22, 100, 101, 102, 103, 104, 105, 106, 107, 108, 116, 119.
 - (i) In respect of quality and/or condition, not later than 24 consecutive days after final discharge of the vessel declared against the contract. (Except for Rye Terms in which case the time should be 21 consecutive days.)
 - (ii) In respect of the quality and/or condition of goods sold otherwise than for shipment, within 28 consecutive days after the date of delivery.

ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORT'S MOTION



ARBITRATION RULES No. 125—Amendment No. 1
Rule 3 (f) (ii)

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When the sale has been of fair average quality, within 28 consecutive days of the publication in the Trade Lists that the Standard has been, or will not be, adopted or made, or within 28 consecutive days of the completion of final discharge of the ship at port of destination which ever period shall last expire.

Effective 1st February, 1972

No. 1—ARBITRATION RULES No. 125—PROCEDURE FOR CLAIMING ARBITRATION AND TIME LIMITS.

Insert "3.—(f) (iii) For Protein Feeding Stuffs, contracts numbers 1, 4, 6, 8, 10, 15, 17, 22, 160, 101, 102, 103, 104, 105, 106, 107, 108, 116, 119, for which no Standards will be prepared, within 2 calendar months of the date of appointment of an arbitrator by or on behalf of the party against whom arbitration has been claimed".

Note: The original paragraph "3.—(f) (iii)" now becomes "3.—(f) (iv)".

PROCEDURE FOR ARBITRATIONS

- 4.—In the event of a contract forming part of a string of contracts which are in all material points identical in terms, except as to price, any arbitration for quality and/or condition shall be held as between the first seller and the last buyer in the string as though they were contracting parties, provided that every party against whom arbitration is claimed and who claims to be in a string shall have supplied his contract and all relevant information to the arbitrators, and any award so made thereinafter referred to as a string award shall, subject to the right of appeal, except an award in respect of condition where the goods have been bought and sold on terms known as "Rye Terms", be binding on all intermediate parties in the string, and may be enforced by any intermediate party against his immediate contracting party as though a separate award had been made under each contract.
- 5.—(a) An arbitrator or an umpire appointed in accordance with the provisions of Rule 2(c) of these Rules may decide in his absolute discretion at any time after the appointment and prior to making an award, that, having regard to the nature of the dispute between any of the parties, such dispute is not one arising out of a contract embodying these Rules, and that in consequence he has no jurisdiction under these Rules to arbitrate thereon.
- (b) In the event of an arbitrator or an umpire deciding that he has no jurisdiction as in Rule 5(a) aforesaid he shall forthwith certify in writing to this effect and forthwith notify the parties to the dispute and the Association in writing of his decision and thereupon the dispute shall be deemed to be one which is not subject to the Arbitration Rules of the Association and accordingly such Rules shall not apply thereto.
- (c) The decision of an arbitrator or umpire appointed in accordance with the provisions of Rule 2(c) of these Rules and made pursuant to Rule 5(a), thereof shall be final and binding upon the parties and upon the Association and it shall not be subject to any right of appeal to the Committee of Appeal save when made by consent of all the parties who shall notify the Association in writing not later than 28 consecutive days after the date of the said decision of their intention to appeal against such decision (hereinafter referred to as the preliminary issue).
- (d) Upon being notified as aforesaid the appropriate Committee of Appeal shall elect a Board of Appeal to determine the preliminary issue.
- (e) The Board of Appeal may in its absolute discretion lay down the procedure to be adopted at the determination of the preliminary issue and may order the parties to the dispute to lodge with the Association within a specified time such fees as the Board of Appeal considers reasonable as a condition of the determination of the preliminary issue.
- (f) The Board of Appeal shall either uphold or reverse the decision of the arbitrator or umpire on the preliminary issue.
- (g) In the event of the Board of Appeal upholding the arbitrator or umpire on a preliminary issue, the Board of Appeal shall certify accordingly and shall notify all parties, the arbitrators, the umpire and the Association that the dispute is deemed to be one which is not subject to these Rules and accordingly that such Rules shall not apply thereto.
- (h) In the event of the Board of Appeal reversing the decision of the arbitrator or umpire on a preliminary issue, the Board of Appeal shall certify accordingly and shall notify all parties, the arbitrators, the umpire and the Association and shall order that the dispute be remitted to arbitration afresh whereupon:—
 - (i) the dispute shall be deemed to be one arising out of a contract embodying these Rules.
 - (ii) the arbitrators and umpire who were formerly appointed shall thereupon cease to act.
 - (iii) the Board of Appeal may in its absolute discretion extend the time under Rule 5(e).
- Provided that:—
 - (iv) no arbitrator or umpire previously appointed under the provisions of Rule 2(c) of these Rules to determine such dispute shall be re-appointed when the dispute is remitted as aforesaid.
 - (v) no objection shall be taken under Rule 3 that time has expired if the requirements of Rule 3 were previously validly complied with.
 - (vi) the Board of Appeal may in its absolute discretion extend the time under Rule 3.
- (i) The Board of Appeal shall have absolute discretion to make such order by way of costs in respect of the preliminary issue as it deems just and equitable.
- (j) The decision of the Board of Appeal on the preliminary issue shall be conclusive and binding upon the parties and upon any subsequent Board of Appeal to which the arbitration award may be referred under these Rules.
- (k) The determination of the preliminary issue shall not preclude a subsequent appeal under these Rules as hereinafter provided, save that no Member of the Board of Appeal which determined the preliminary issue shall be eligible to vote for or serve on a Board of Appeal which subsequently determines the appeal against the award of arbitration in that dispute.

AWARDS OF ARBITRATION

- 6.—(a) All awards of arbitration by arbitrators or an umpire shall be in writing on an official form issued by the Secretary General, and the arbitrators or umpire shall have the power to award the costs of and connected with the reference, and may assess their fees. The Association's fees shall be those for the time being in force as prescribed by the Council.
- (b) The arbitrators or umpire, on the application of either party before the arbitration award is signed, shall have the power to extend the time for appealing in any case in which they or he consider it just or necessary so to do. Any such extension must be stated in the award of arbitration.
- (c) Upon the signing of an award of arbitration it shall be the duty of the arbitrators or the umpire to lodge it with not less than two official copies with the Secretary General. The Secretary General shall date the award and the copies and shall either (i) issue the award to the party who claimed arbitration, who shall within a specified number of days pay the fees and expenses, and send copies to the other parties, or (ii) give notice to the parties named in the award that the award is at their disposal upon payment of the fees and expenses to the Association.
- (d) If an award is not paid for in accordance with either Rule 6(c)(i) or Rule 6(c)(ii) within twenty-one consecutive days after the date of the award, the Secretary General may call upon any of the principals named to take up the award, and in such case the party so called upon shall pay the fees and expenses as directed.
- (e) Awards of arbitration (subject to the right of appeal hereinafter mentioned) shall be conclusive and binding on the parties, both with respect to the matter in dispute and all expenses of and incidental to the reference and award.

APPEALS

- 7.—No appeal shall be allowed on awards for condition where the goods have been sold on terms "Guaranteed sound on arrival and/or Rye Terms."
- 8.—(a) If any party, except as provided in Rule 7 above, be dissatisfied with an arbitration award, a right of appeal shall lie to a Board of Appeal to be elected in accordance with the Rules and Regulations of the Association in force at the time of the contract and provided that the following conditions are complied with, but not otherwise:—

ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORT'S MOTION

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ARBITRATION RULES No. 125—Amendment No. 2

Rule 8 (a) (i)

The appellant shall give written notice of appeal to the Secretary accompanied by a copy of the notice which is required by Rule 8(a)(iii) to be sent by him to the other party to the arbitration award and (subject to the provisions of Rule 10) payment to the Association of a fee of £75 if the appellant is a Member of the Association or a fee of £100 if he is a Non-Member.

Effective 1st April, 1972

- (iii) The appellant, when giving notice of appeal, shall—
 - (iv) The appellant shall proceed with his appeal with due despatch.
 - (v) The total fees and expenses of the arbitration award shall be paid before the appeal is heard.
 - (vi) In cases of appeals lodged by more than one party in relation to the same award any two of the Officers shall have the power to consolidate such appeals for hearing by the same Board of Appeal.
 - (b) The appellant shall pay such further sum or sums on account of fees, costs and expenses as may be called for by the Association prior to the publication of the award by the Board of Appeal.
 - (c) If the appellant on receiving notice from the Secretary General of the date fixed for the hearing of the appeal, requests a postponement of more than 14 consecutive days or at the first or any subsequent hearing of the appeal requests an adjournment, or if either party requests a Special Case to be stated for the opinion of the Court, then in any such event the Board of Appeal may in its absolute discretion direct that any money required by the terms of the arbitration award to be paid by either party to the other shall be paid either in whole or in part to the Association. Such money shall be placed on deposit with a bank in the name of the Association pending the publication of the award of the Board of Appeal and on the publication of the award the said money (with the deposit interest, if any, less tax) shall be applied by the Association in such manner as to give effect to such award either in whole or in part according to the interests of the parties and the principal sum available. Provided that, if in the opinion of the Board of Appeal after hearing the parties, the appellant shall be guilty of undue delay in proceeding with his appeal, he shall, after due warning and if the Board of Appeal so decides, be deemed to have withdrawn his appeal (with the consequences as stated in Rule 16) in which event the money on deposit (with interest, if any, less tax) shall immediately become due and payable to the party and/or parties entitled thereto under the terms of the Award of Arbitration.
 - (i) If the appellant fails to make such payment as aforesaid in accordance with the directions of the Board of Appeal and within such time as the Board of Appeal stipulates, subject to the provisions of Rule 10, the Appeal shall be deemed to be withdrawn.
 - (ii) If a party requesting a Special Case fails to make such payment as aforesaid in accordance with the directions of the Board of Appeal and within such time as the Board of Appeal stipulates, subject to the provisions of Rule 10, the request for a Special Case shall be deemed to be withdrawn.
- 9.—The party requiring a Special Case to be stated for the opinion of the Court shall within 9 consecutive days from the requirement, pay to the Association by way of a deposit and on account of the costs, fees and expenses of or connected with the stating and argument thereof the sum of £500 or such larger sum as the Board of Appeal may require and shall, on demand, pay to the Association such further sum or sums, if any, as the Board of Appeal may from time to time require for or on account of such costs, fees and expenses.
- 10.—If an appellant or a party requiring a Special Case to be stated for the opinion of the Court is precluded by currency regulations from paying immediately any money due to be paid by him under this Rule and notifies the Secretary General in writing (i) in the case of the appeal fee when giving notice of appeal and (ii) in the case of any further sum being called for under Rule 8(b) or being directed to be paid under Rule 8(c), within 9 consecutive days of the money being demanded, accompanied (in every case) by evidence from a bank that he has already made application for the transfer of the required sum, he shall be granted an extension of up to 35 consecutive days from the date when the said payment became due in which to pay such sum.
- 11.—(a) In any case in which a string award shall have been made by any arbitrators or umpire as aforesaid and the first seller, the last buyer, or any intermediate party bound thereby shall be dissatisfied therewith (whether the award shall be in his favour or against him) the first seller, the last buyer, or any intermediate party (as the case may be) or any of them shall be entitled to appeal against that award to the said Board of Appeal, provided that each of the following provisions in addition to the provisions of Rule 8 shall first have been complied with.
 - (i) The appellant shall give notice of appeal to the Secretary General accompanied by a copy of the notice which is required by sub-paragraph (iv) to be sent by him to the other party to the arbitration award and, subject to the provisions of Rule 10, payment to the Association of the appropriate fee.
 - (ii) If the appellant is an intermediate party he shall state in such notice of appeal whether he is appealing as buyer or seller.
 - (iii) The appellant's notice of appeal (except in the event stated in Rule 10) and the remittance in respect of the fee shall reach the Secretary General not later than 12 noon on the 30th consecutive day after the date of the arbitration award.
 - (iv) If the appellant is a first seller or last buyer he shall, when giving notice of appeal, also despatch written notice thereof to the intermediate party in immediate contractual relationship with him and if the appellant is an intermediate party and is appealing as buyer or seller, he shall when giving notice of appeal also despatch written notice thereof to his own immediate seller or buyer, as the case may be.
- (b) Every notice given to an intermediate party by a first seller, a last buyer or by another intermediate party in accordance with the provisions of sub-paragraph (a) hereof shall be passed on in due course and rotation and such passing on shall, as between the intermediate party passing the same on and the party to whom the same is passed on, be deemed to be compliance with the said conditions relating to appeals, anything hereinbefore contained to the contrary notwithstanding.
- (c) All appeals to which this Rule applies shall be held in the like manner in which the corresponding arbitrations are required by Rule 4 to be held and any award made by a Board of Appeal shall in all respects have the like effect and shall be enforceable in the like manner as is provided in that Rule in the case of awards made in the corresponding arbitration, and non-compliance with any of the provisions of sub-paragraph (b) of this Rule shall in no way limit or affect the rights and jurisdiction of the Board of Appeal.

12.—Each party to an appeal from an arbitration award shall state its case either orally or in writing and may either appear personally or be represented by an agent engaged or who has been engaged in the trade and duly appointed in writing, but shall not be represented at the hearing of such appeal by counsel or a solicitor unless special leave shall have previously been obtained in writing from the Board of Appeal, which leave the Board of Appeal may grant or refuse in their absolute discretion and without assigning any reason.

13.—The Board of Appeal shall confirm the arbitration award appealed against unless all, or all except one of the members of the Board of Appeal, decide to vary such award. The Board of Appeal may award the payment of the costs and expenses of and incidental to the arbitration and appeal, but such fees shall follow the award, unless all or all except one of the members of the Board of Appeal shall direct otherwise. The award of the Board of Appeal, whether confirming or varying the original arbitration award, shall be signed by the Chairman of the Board of Appeal, and when so signed shall be deemed to be the award of the Board of Appeal and shall be final and conclusive in all cases.

14.—In the case of the illness or death, or refusal, incapacity or inability to act, of any Member elected to serve on a Board of Appeal, the remaining Members of the Board may, in the absence of a duly elected substitute and provided that the number of Members is not reduced below four, act and exercise all the powers of a Board of Appeal. If it be reduced to three the parties or their representatives shall decide whether the Board be re-constituted.

15.—The Board of Appeal shall have the power to vary an arbitration award (in addition to the power to vary in any other manner) by increasing, if the Board shall see fit, the liability of the appellant.

16.—An appellant from an arbitration award shall have the right, at any time before the hearing of the appeal is begun, to withdraw his appeal. On notice being received from the appellant within 10 consecutive days of the date on which the appeal is accepted half of the fee shall be returned and on notice not later than 48 hours before the time fixed for the hearing a quarter of

ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORT'S MOTION

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the fee shall be returned, but on any later withdrawal no part of the fee shall be returned. In the event of an appellant withdrawing his appeal as aforesaid, the Board of Appeal shall have the power to award such sum by way of costs as they in their absolute discretion deem to be proper in the circumstances.

17.—Where appeals from an arbitration award are lodged by both parties and the Board of Appeal directs that the fees shall be divided, £20 shall be returned to each party, and when the fees are not so divided, £40 out of the fee lodged shall be returned to the successful appellant.

18. The Secretary General may call upon either of the disputing parties to take up the award of the Board of Appeal, and in such case the party so called upon shall take up the award and pay the fees, costs and expenses.

19. Any dispute as to whether any of the conditions referred to in Rules 8 and 11 have been complied with shall be heard and determined by the Board of Appeal. If the Board of Appeal shall determine that any of those conditions have not been complied with, it may in its absolute discretion extend the time for compliance (notwithstanding that the time may already have expired) or dispense with the necessity for compliance and may proceed to hear and determine the appeal as if each and all of those conditions had been complied with. The determination of the Board of Appeal of any matter to which this paragraph applies shall be final, conclusive and binding.

GENERAL PROVISIONS

20.—All samples sent to the Association for arbitration, testing and/or other purposes shall become and be the absolute property of the Association.

21.—(a) No award by arbitrators or an umpire shall be questioned or invalidated on the ground that either of the arbitrators or umpire is or was not qualified to act as provided in Rule 1, unless objection to his acting is made in writing before the hearing of such arbitration is begun.

(b) No award of a Board of Appeal or decision by a Board of Appeal on a preliminary issue as defined in Rule 5(A), shall be questioned or invalidated on the ground of any irregularity in the election of the Board of Appeal or of any of its members, or on the ground that any member of the Board of Appeal was not eligible to serve, unless objection is made in writing and established to the satisfaction of the Board of Appeal before the hearing of the Appeal or of the preliminary issue is begun.

22.—Whenever it shall appear to the Council that by reason of a state of war, war-like operation, strike, lock-out, riot or civil commotion existing, or which may hereafter exist, parties to contracts which have been, or may hereafter be made, upon any of the contract forms of the Association, have been, or may be prevented from exercising any of their rights within the time limits prescribed by these Rules, the Council shall have, and shall be deemed always to have had, the power to extend any of such time limits at any time and from time to time and to any extent necessary to enable justice to be done between the parties. Such extension may be made generally or with reference to any particular dispute.

In the event of the Council deciding so to extend any of such time limits with reference to any particular dispute, notice thereof shall be given by the Council to any of the parties to the contract who may be available to receive it.

23.—The Provisions of the Arbitration Act, 1950, or of any statutory modification or re-enactment thereof for the time being in force, shall apply to every arbitration and appeal as aforesaid, save in so far as the same are modified by or are inconsistent with any of the foregoing provisions of these rules.

DEFAULTERS

24.—In the event of any party to an arbitration/appeal held under these Rules neglecting or refusing to carry out or abide by a Final Award of arbitrators or umpire or Board of Appeal made under these Rules, the Council of the Association may post on the Association's Notice Board and/or circularise to Members in any way thought fit notification to that effect. The parties to any such arbitration/appeal shall be deemed to have consented to the Council taking such action as aforesaid.

SUMMARY OF FEES

ARBITRATION RULES No. 125—Amendment No. 3

SUMMARY OF FEES

Official Appointment of an Arbitrator	Members	£5	} per contract
	Non-members	£10	
Official Appointment of an Umpire		£5	

Arbitration Awards

(In addition to fees charged by arbitrators).

Association's basic fee (Technical & Quality)	£20
Fee, when the official form of contract has not been used	£10
Fee to be paid by each Non-member named as a principal in the award	£5

Appeals

Per Arbitration Award	Member	£75
	Non-Member	£100

Effective 1st April, 1972

All Communications to be addressed to

The Secretary General, The Grain and Feed Trade Association, 28 St. Mary Axe, London, E.C.3.



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GAFTA CONTRACT FORMS

The plaintiffs' papers in opposition properly point out that the GAFTA No. 30 and 125 forms attached to the moving papers were issued subsequent to the shipment which is the subject of this law suit.

Attached hereto as Exhibits D(1) and E(1) are the GAFTA forms which were in existence at the date of sale. These standard forms have been in existence for many years and are reissued from time to time. We apologize for having submitted the most current form and request the Court to substitute Exhibits D(1) and E(1) for the original Exhibits D and E attached to the moving papers. At the same time we draw the Court's attention to the fact that the applicable GAFTA No. 30 form has the identical arbitration clause and is, except for paragraph numbering, otherwise virtually identical. The same is true for the arbitration rules contained in the GAFTA 125 form.

HISTORY OF PRIOR DEALINGS

Export and plaintiffs had for many years incorporated arbitration provisions in their contracts of sale. The sale which is the subject of this litigation is not the first between Export and plaintiffs. Export has been selling grains and soybeans to plaintiffs for many years. Indeed, Export's records indicate that over the last two years plaintiffs have purchased over 170,000 tons of grains and soybeans having a total value of approximately \$33 million.

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Annexed hereto are five contracts (Exhibits F-1 through 5) evidencing sales of grains and soybeans to plaintiffs. A translation of one of these contracts (the remaining four are identical but for the commodity, quantity, price, port of loading and dates) is annexed hereto as Exhibit G.

All prior contracts incorporate the offers of sale and these offers have been annexed hereto as Exhibit H(1) through H(5). A translation of an offer has been annexed as Exhibit I. Again, the Court can see that all prior offers incorporated the terms of a standard grain association form and rules, in certain instances those of the North American Export Grain Association (NAEGA) since the sales were made FOB rather than on C&F terms.

NAEGA 2 rules apply to the rights, duties and obligations of the parties when the sales are made on FOB terms, whereas GAFTA No. 30 rules apply when sales are made on a CIF (or in this case C&F) basis.

In point of fact, the sale here involved originally incorporated NAEGA 2 and it was only after Export and the plaintiffs recognized that NAEGA 2 was obviously inapplicable (since this was not an FOB sale) that the addendum was executed (Exhibits A and B of the moving papers), replacing NAEGA 2 with GAFTA No. 30 insofar as those clauses were applicable "for purchases on the basis of 'Cost and Freight'." (emphasis supplied) It is significant that both NAEGA 2 and GAFTA No. 30 provide for arbitration albeit in different locations: NAEGA 2 requires New York arbitration whereas the situs in GAFTA No. 30 is London.

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Patently, taking into consideration the plaintiffs' long history of dealings with Export and in the grain market, plaintiffs were very much aware of the arbitration provisions incorporated into the contract of sale upon which this suit is based. In fact, your deponent is reliably informed that EPCHAP has recently been involved in arbitration proceedings in London under the GAFTA rules.

APPLICABILITY OF GAFTA No. 30

Plaintiffs' opposing affidavit makes much of the fact that GAFTA No. 30 only relates to CIF sales whereas the instant sale was C&F. This argument is misplaced since by its very terms GAFTA No. 30 was incorporated only insofar as it related to C&F sales.

At the time of the sale there were over 70 standard contract forms issued by GAFTA and in use for the purchase/sale of various grains and feedstuffs, from a variety of origins, to a variety of destinations. There existed no standard contract form for U.S. grain sold C&F and the practice of the trade was followed in this case, i.e. - to incorporate the provisions of GAFTA No. 30, which most closely corresponded to the terms of this transaction. If there is no standard contract form which corresponds precisely to the terms of a particular transaction, it is customary to utilize the contract form which most closely "fits" the transaction, with the terms of the particular transaction replacing those of the standard form where there is any contradiction.

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The incorporation of GAFTA No. 30 obviously could not include Clauses 12 or 21 since the buyer (plaintiffs herein) was to provide the insurance. The same is true for portions of other clauses that relate to purchase of and payment for applicable insurance policies. However, the arbitration provision contained in Paragraph 33 of GAFTA No. 30 is not affected by limiting the incorporation to a C&F, as opposed to a CIF, sale. Therefore, the GAFTA No. 30 is, with the exception of those particular clauses dealing with insurance, applicable to the contract of sale.

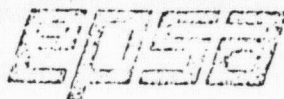
Albert Slabotzky

ALBERT SLABOTZKY

Sworn to before me this
19 day of January, 1976.

Phyllis S. Sogler
Notary Public

Notary Public for New York
No. 2111677
County of New York
Commission filed in New York County
Commission Expires March 30, 1977



CONTRATO Nº 021-74-DIC-TRIGO

CONTRATO DE COMPRA-VENTA DE 25,000 T.M. 5% MAS O MENOS DE TRIGO
HARD WINTER WHEAT Nº2 O MEJOR, MÍNIMO 11% PROTEÍNA, QUE CELEBRAR
COMERCIO EXTERIOR DE LA EMPRESA PÚBLICA DE SERVICIOS AGROPECUA-
RIOS, DEPENDENCIA DEL MINISTERIO DE COMERCIO Y LA FIRMA CONTINEN-
TAL GRAIN EXPORT CORP.

Conste por el presente documento el Contrato de Compra-Venta que celebran en su calidad de VENDEDOR la firma Continental Grain - Export Corporation, representada por Barco S.A., con L.T.Nº29081704 y domicilio en Jr. Conán 251 Of. 1502 - Lima, representada por el Sr. William Barnett Williams con L.T.Nº2466805 y C.E.Nº2736 y en calidad de COMPRADOR, Comercio Exterior de la Empresa Pública de Servicios Agropecuarios, Dependencia del Ministerio de Comercio con L.T.Nº9947221, representada por su Corrente de Comercio Exterior Sr. Fernando Sarmiento Morey, con L.E.Nº2804471 y L.T.Nº - - 051813 y su Sub-Corrente Sr. Alvaro de la Fuente Galdo con L.E.Nº 3092171 y L.T.Nº4360664, de acuerdo a los siguientes términos:

CLÁUSULA PRIMERA:- Por el presente Contrato la firma Continental Grain Export Corporation vende y el COMPRADOR adquiere hasta 25,000 T.M. 5% más o menos de Trigo Hard Winter - wheat Nº2 ó mejor mínimo 11% Proteína, según calidad y peso final definitivo al empaque de acuerdo a los certificados otorgados por Inspectores autorizados del Ministerio de Agricultura de los Estados Unidos de Norte América.

CLÁUSULA SEGUNDA:- El precio estipulado es US\$171.46 FOB por TM al final del tubo de descarga en un puerto - U.S.A. Golfo, sin estibar y sin armar.

CLÁUSULA TERCERA:- El COMPRADOR se obliga a tener la mercadería lista para embarcar del 15 de Setiembre al - 15 de Octubre de 1974.

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CONTRATO N° 021-74-DIG-TRIGO

- 2 -

CLAUSULA CUARTA:- De conformidad con el sistema operativo -
utilizado en este crédito, el COMPEADOR -
abrirá antes de iniciarse los embarques, una carta de crédito, -
por el 100% del valor de la mercadería más intereses que se cal-
cularán sobre la tasa del 9.5% por el 10% confirmado en Banco -
USA y 10.5% por el saldo no confirmado en Banco USA, en dólares
a favor del Commodity Credit Corporation con vencimientos esca-
lonados y en partes iguales a los 12, 24 y 36 meses del conoci-
miento de embarque, irrevocable, confirmada, transferible y di-
visible en un Banco de Primera Clase de los Estados Unidos a -
través del Banco de la Nación del Perú y la cual sólo podrá ha-
cerse efectiva cuando se presenten los siguientes documentos:

- a) Certificado de Origen, otorgado por las Autoridades corres-
pondientes (1 original y 3 copias).
- b) Conocimiento de Embarque, juego completo, limpio a bordo -
(3 originales y 5 copias) charter parties Bill of Lading -
aceptable.
- c) Factura Consular (originales y 5 copias).
- d) Certificado de Calidad otorgado por Inspectores autorizados
del Ministerio de Agricultura de los Estados Unidos (Depar-
tamento de Agricultura).
- e) Factura Comercial (originales y 5 copias).
- f) Certificado de Peso otorgado por un Controlador de Peso auto-
rizado.
- g) Certificado Fito-Sanitario otorgado por el Departamento de
Agricultura de los Estados Unidos.

...//P6g.3

BEST COPY AVAILABLE



97 a

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CAHUIDE 605 96. PISO TELEFONO 71-1064 (LIMA 5)

CONTRATO N° 071-74-DIC-TRIGO

- 3 -

CLAUSULA CUARTA:- El VENDEDOR garantiza una velocidad de embarque de 4,000 T.M. por día laborable de 24 - horas consecutivas (M.D.C.H.E.) una vez atracado el buque al muelle.

CLAUSULA QUINTA:- Son de cuenta del COMPRADOR:

- a) El Seguro Marítimo para el transporte de la mercadería.
- b) Los gastos bancarios de esta operación.

Son de cuenta del VENDEDOR:

- a) Los Gastos Consulares.
- b) Los gastos ocasionados por el concurso de precios que ha dado origen al presente Contrato.

CLAUSULA SEPTIMA:- En el caso que el COMPRADOR no cumpla con la fecha de embarque, pagará los gastos de almacenaje, a razón de 0.15 dólares por tonelada por día, más los intereses sobre el valor FOB.

CLAUSULA OCTAVA:- Otros términos y condiciones según la oferta del VENDEDOR del 21 de Agosto de 1974, los cuales son parte también del presente Contrato, y ANEXO N°2, revisado para ser aplicados cuando no estén en contradicción con la mencionado arriba.

CLAUSULA NOVENA:- Las partes señalen como domicilio en:

El VENDEDOR en:

Jr. Camaná 851 Of. 1501 - Lima

...//P3g.4

ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORT'S MOTION



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EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CAHUIDE 805 90. PISO TELEFONO 71-1054 (LIMA-5)

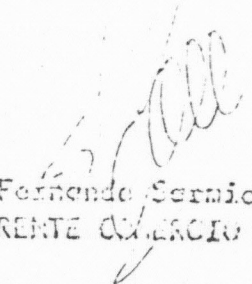
CONTRATO N° 021-74-DIC-TRIGO

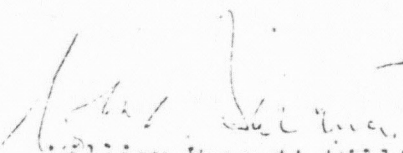
- 4 -

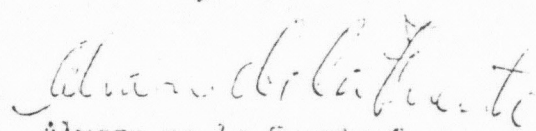
El COMPRADOR es:

Jr. Cahuide 805, Piso 7, Jesús María y co -
someten a los Jueces de Lima-Perú, renunciando a cualquier -
otro que pudiera favorecerles. Asimismo, hacen renuncia ex-
presa a cualquier intervención o reclamación diplomática.

El presente Contrato N° 021-74-DIC-TRIGO, se suscribe en Lima
a los 22 días del mes de Agosto de 1974, con la firma CONTINEN
TAL GRAIN EXPORT CORPORATION.


Fernando Sarmiento K.
GERENTE COMERCIO EXTERIOR


William Barnett Williams
L.T. 102466805
C.E. 1027786


Alvaro de la Fuente G.
SUB-GERENTE



99 a

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CAHUIDE 805 Dg. PISO TELEFONO 71-1064 (LIMA-6)

CONTRATO DE COMPRA-VENTA DE 24,000 T.M. 51 MAS O MENOS DE TRIGO HARO WINTER WHEAT Nº2 O MEJOR, MÍNIMO 11% PROTEÍNA, QUE CUMPLA CON LOS REQUISITOS DEL COMERCIO EXTERIOR DE LA EMPRESA PÚBLICA DE SERVICIOS AGROPECUARIOS, DEPENDENCIA DEL MINISTERIO DE COMERCIO Y LA FIRMA CONTINENTAL GRAIN EXPORT CORPORATION.-

Conste por el presente documento el Contrato de Compra-Venta que celebran en su calidad de VENDEDOR la firma Continental Grain - Export Corporation, representada por Barco S.A., con L.T. Nº 2461704 y domicilio en Jr. Candán 661 Of. 1502 - Lima, representada por el Sr. William Barnett Wilkins con L.T. Nº 2460333 y L.E. Nº 2706 y en calidad de COMPRADOR, Comercio Exterior de la Empresa Pública de Servicios Agropecuarios, Dependencia del Ministerio de Comercio con L.T. Nº 247221, representada por su Gerente de Comercio Exterior Sr. Fernando Sarmiento Moray, con L.E. Nº 2804471 y L.T. Nº 27070 y su Sub-Gerente Sr. Alvaro de la Fuente Calde con L.E. Nº 3692171 y L.T. Nº 2460334, de acuerdo a los siguientes términos:

CLÁUSULA PRIMERA:- Por el presente Contrato la firma Continental Grain Export Corporation vende y el COMPRADOR adquiere hasta 24,000 T.M. 51 más o menos de Trigo Haro Winter Wheat Nº 2 ó mejor mínimo 11% Proteína, según calidad y peso final definitivo al embarque de acuerdo a los certificados otorgados por Inspectores autorizados del Ministerio de Agricultura de los Estados Unidos de Norte América.

CLÁUSULA SEGUNDA:- El precio estipulado es de US\$172.40 FOB por T.M. al final del tubo de descarga en un puerto USA Colfo, sin estibar y sin arrimar.

CLÁUSULA TERCERA:- El COMPRADOR se obliga a tener la mercadería lista para embarcar del 1 al 31 de Octubre de 1974.

..//r6c.2

100 a

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS

CAHUIDE 605 9o. PISO TELEFONO 71-1064 (LIMA-5)

CONTRATO N° 023-74-DIC-TRIGO

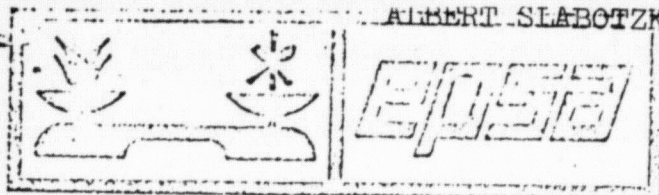
- 2 -

CLÁUSULA CUARTA:-

De conformidad con el sistema operativo -
utilizado en este crédito, el COMPRADOR, -
abrirá antes de iniciarse los embarques, una carta de crédito,
por el 100% del valor de la mercadería más intereses que se -
calcularán sobre la tasa del 9.5% por el 10% confirmado en Ban-
co USA y 10.5% por el saldo no confirmado en Banco USA, en dól-
lares a favor del Commodity Credit Corporation con vencimientos
escalonados y en partes iguales a los 12, 24 y 36 meses del co-
mencio de embarque, irrevocable, confirmada, transferible
y divisible en un Banco de Primera Clase de los Estados Unidos
a través del Banco de la Nación del Perú, el saldo no cubier-
to por el crédito del Commodity Credit Corporation será pagado
al contado mediante una carta de crédito a la vista irrevocable
confirmada abierta a favor de Continental Grain Export Corpora-
tion y las cuales solo podrán hacerse efectivos cuando se pre-
senta los siguientes documentos:

- a) Certificado de Origen, otorgado por las autoridades corres-
pondientes (1 original y 3 copias).
- b) Conocimiento de Embarque, juego completo, limpio a bordo -
(3 originales y 5 copias) charter parties Bill of Lading -
acceptable.
- c) Factura Consular (originales y 5 copias).
- d) Factura Comercial (originales y 5 copias).
- e) Certificado de Calidad otorgado por Inspectores autorizados
del Ministerio de Agricultura de los Estados Unidos (Depar-
tamento de Agricultura).
- f) Certificado de Peso otorgado por un Controlador de Peso auto-
rizado.
- g) Certificado Fito-Sanitario otorgado por el Departamento de -
Agricultura de los Estados Unidos.

...// 96g.3



CONTRATO Nº 023-74-DIS-TRIGO

- 3 -

CLAUSSULA CUARTA:- El VENDEDOR garantiza una velocidad de embarque que de 4,000 T.M. por día laborable de 24 horas consecutivos (veinticuatro) una vez atracado el buque al muelle.

CLAUSSULA VTA:- Son de cuenta del COMPRADOR:

- a) El Seguro Marítimo para el transporte de la mercadería.
- b) Los gastos bancarios de esta operación

Son de cuenta del VENDEDOR:

- a) Los Gastos Consulares.
- b) Los gastos ocasionados por el concurso de precios que ha dado origen al presente Contrato.

CLAUSSULA SEPTIMA:- En el caso que el COMPRADOR no cumpla con la fecha de embarque, pagará los gastos de almacenamiento, a razón de 0.08 ctvs. por tonelada por día, más los intereses sobre el valor FOB.

CLAUSSULA OCTAVA:- Otras cláusulas y condiciones según la oferta del VENDEDOR del 21 de Agosto de 1974, las cuales son parte también del presente Contrato, y NÚMERO 112, revocado para ser aplicados cuando no estén en contradicción con lo mencionado arriba.

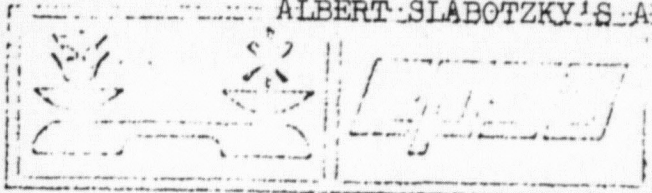
CLAUSSULA NOVENA:- Las partes señalan como domicilio en:

El VENDEDOR en:

Jr. Camaná 881 - Of. 1502 - Lima

..//P6g.4

ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORT'S MOTION



102 a

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CAHUIDE 805 90. PISO TELEFONO 71-1064 (LIMA-5)

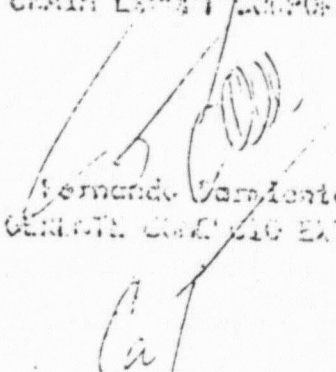
CONTRATO N° 022-74-026-1A160

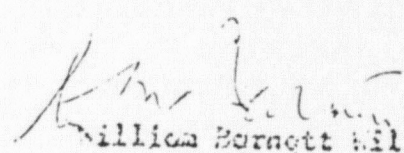
- 4 -

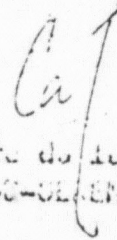
El CONTRATO en:

Jr. Cahuido 805, Piso 7, Jesús María y se -
someten a los Juces de Lima-Perú, renunciando a cualquier otro
que pudiera favorecerles. Asimismo, hacen renuncia expresa a -
cualquier intervención o reclamación diplomática.

El presente Contrato N° 022-74-026-1A160, se suscribe en Lima a
los 26 días del mes de Agosto de 1974, con la firma CONTINENTAL
GRAIN LEASE CORPORATION.


Fernando Camacho M.
GERENTE COMERCIO EXTERIOR


William Barnett Williams
L.T.N. 2461005
C.R. 2730


Alvaro de la Fuente C.
SUC-GERENTE



103 a

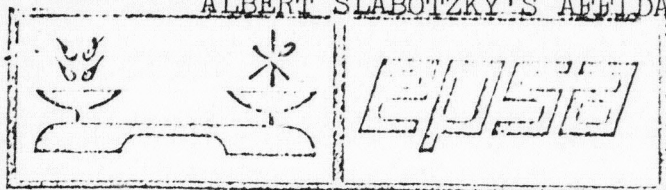
EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
LAHUIDE 805 90. PISO TELEFONO 71-1064 (LIMA-5)

CONTRATO Nº 009-74-DIG.

CONTRATO DE COMPRA-VENTA DE 35,000 T.M. 5% MAS O MENOS DE
TRIGO NORTHERN/DARK NORTHERN SPRING Nº 2 O MEJOR, 14% PRO -
TEINA MINIMO, QUE CELEBRAN LA EMPRESA PUBLICA DE SERVICIOS
AGROPECUARIOS - EPSA - Y LA FIRMA CONTINENTAL GRAIN EXPORT
CORPORATION.-

Conste por el presente documento el Contrato de Compra-Venta que celebran en su calidad de VENDEDOR la firma CONTINENTAL GRAIN EXPORT CORP., representada por la firma BARCO S.A. con L.T.Nº 9081704 y con domicilio en Camaná 851, Lima, y en su calidad de COMPRADOR, la EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS con L.T.Nº 9947221, representada por su Director Ejecutivo, Ing. Manuel Díaz Cano con L.E.Nº 5614153 y L.T.Nº -- 6263112, y su Gerente de Importación Sr. Fernando Sarmiento Morey, con L.E.Nº 2004471 y L.T.Nº 0513913, de acuerdo a los siguientes términos:

CLAUSULA PRIMERA:- Por el presente Contrato, la firma CONTINENTAL GRAIN EXPORT CORP. vende y el COMPRADOR adquiere hasta 35,000 T.M. 5% más o menos de Trigo Northern/Dark Northern Spring Nº 2 ó mejor, 14% proteína mínimo según calidad y peso final definitivo al embarque, de acuerdo a los certificados otorgados por Inspectores autorizados del Ministerio de Agricultura de los Estados Unidos de Norteamérica.



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EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CAHUIDE 805 9o. PISO TELEFONO 71-1064 (LIMA 5)

Contrato N° 009-74-DIG.

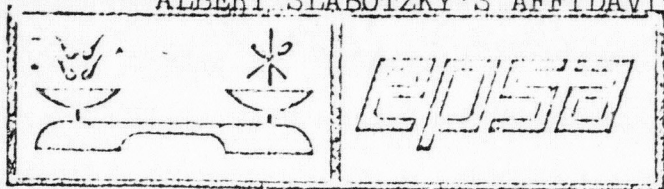
- 2 -

CLAUSULA SEGUNDA:- El precio estipulado es de US\$ 219.00 -
FOB per T.M. al final del tubo de des -
carga en un puerto U.S.A. Colfo sin estibar y sin arrimar.

CLAUSULA TERCERA:- El VENDEDOR se obliga a tener lista pa -
ra embarcar la mercadería en el mes de
Marzo de 1974.

CLAUSULA CUARTA:- El pago se realizará mediante Carta de
Crédito irrevocable y confirmada, nego -
ciable y transferible abierto en un Banco de Primera clase
en los Estados Unidos de Norteamérica y pagadora a la vista
contra la presentación de los siguientes documentos de em -
barque:

- a) Certificado de Origen, otorgado por las Autoridades co -
rrespondientes (1 original y 3 copias).
- b) Conocimiento de embarque, juego completo, limpio a bordo
(3 originales y 5 copias) charter parties Bill of Lading
aceptable.
- c) Factura Consular (originales y 5 copias).
- d) Factura Comercial (originales y 5 copias).
- e) Certificado de calidad otorgado por Inspectores autoriza -
dos del Ministerio de Agricultura de los Estados Unidos.
- f) Certificado de Peso otorgado por entidad oficial en los
Estados Unidos.
- g) Certificado Fito-Sanitario otorgado por USA Departamento
de Agricultura.



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EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CAHUIDE 805 90. PISO TELEFONO 71-1064 (LIMA-5)

Contrato N° 009-74-DIG.

- 3 -

CLAUSULA QUINTA:- El VENDEDOR garantiza una velocidad de embarque de 4,000 T.M. por día laborable (WDSHEX) en cuanto el buque esté atracado al muelle de carga.

CLAUSULA SEXTA:- Son de cuenta del COMPRADOR:

- a) El Seguro Marítimo para el transporte de la mercadería.
- b) Los gastos bancarios de esta operación.

Son de cuenta del VENDEDOR:

- a) Los Gastos Consulares.
- b) Los gastos ocasionados por el concurso de precios que - han dado origen al presente Contrato.

CLAUSULA SEPTIMA:- En el caso de que el COMPRADOR no cumpla con la fecha de embarque, pagará los gastos de almacenaje a razón de US\$ 0.05 por T.M. y por día, más los intereses, salvo el caso de que este incumplimiento sea por responsabilidad del VENDEDOR.

CLAUSULA OCTAVA:- La oferta de venta también forma parte del presente Contrato.

CLAUSULA NOVENA:- Las partes señalan como domicilio:

El VENDEDOR en:

Jr. Camenó 351, Lima

El COMPRADOR en:



106 a

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CAHUIDE 805 90. PISO TELEFONO 71-1064 (LIMA-5)

Contrato Nº 009-74-DIG.

- 4 -

El COMPRADOR en:

Jr. Cahuide 805, Piso 7, Jesús María, y se someten a los -
Jueces de Lima-Perú, renunciando a cualquier otro que pu -
diera favorecerles. Asimismo, hacen renuncia expresa a --
cualquier intervención o reclamación diplomática.

Suscrito en Lima a los días del mes de do
1974.

POR EPSA

POR CONTINENTAL GRAIN EXPORT CORP.

Ing. Manuel Díaz Cano
Director Ejecutivo.

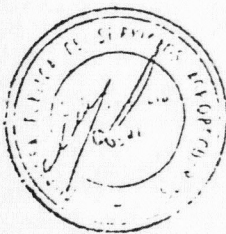
Sr. William Barnett Williams
C.E.Nº 2786
L.T.Nº 2466805

Sr. Fernando Sarmiento M.
Gerente Comercio Exterior
Importación

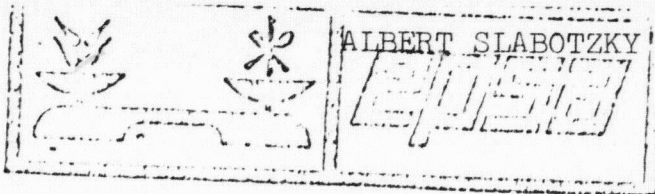
CONTRATO DE COMRA VENTA DE 10,000 T.M. 5% MAS O MENOS, DE
FREJO DE SOYA AMARILLA NO 2, 14% DE HUMEDAD MAXIMA, CUI -
CULIDAD: LA EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS -
- EPISA - Y LA FIRMA CONTINENTAL GRAIN EXPORT CORPORATION -
DE NEW YORK.

Conato por el presente documento el Contrato de Compro-Ven-
ta que celebran en su calidad de VENDEDOR la firma CONTINEN-
TAL GRAIN EXPORT CORPORATION, representada en el Perú por -
la firma SARCO S.A. con L.T. N° 9231704 y domicilio en Cami-
nó 651, Lima, representada por el Sr. William Barnett Mil-
lins con Carnet de Extranjería N° 2734 y L.T. N° 2466335,
y en su calidad de COMPRADOR la EMPRESA PUBLICA DE SERVI-
CIOS AGROPECUARIOS con L.T. N° 9947221, representada por su
Director Ejecutivo, Ing. Manuel Díez Cano con L.T. N° 23614150
y L.T. N° 4344112 y su Gerente de Importaciones, Sr. Fernan-
do Llamante Moray con L.T. N° 2064471 y L.T. N° 6315913, -
de acuerdo a los siguientes términos:

CONDICIONES: - Por el presente Contrato, la firma -
CONTINENTAL GRAIN EXPORT CORPORATION vende y el COMPRADOR -
adquirirá hasta 10,000 T.M., 5% más o menos, de frejole de so-
ya amarilla N° 2, 14% de humedad máxima, según calidad y po-
so final definitivo al embarque, de acuerdo a los certifica-
dos otorgados por Inspectores autorizados del Ministerio de
Agricultura de los Estados Unidos de Norte América.



At



ALBERT SLABOTZKY

S AFFIDAVIT IN SUPPORT OF EXPORTS MOTION

108 a

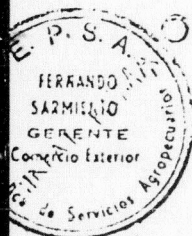
EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CAHUIDE 805 90. PISO TELEFONO 71-1064 (LIMA-5)

CLÁUSULA PRIMERA: El precio es de US\$210.00 FOB Colfo -
USA por T.M., sin estibar y sin trincar.

CLÁUSULA SEGUNDA: El VENDEDOR se obliga a tener listo la
mercadería para embarque en el mes de Mayo.

CLÁUSULA TERCERA: El pago se realizará al contado contra
la presentación de los documentos de embarque que indiquen
a continuación, para lo cual el COMPRADOR abrirá una carta -
de crédito a la vista a favor de los VENDEDORES:

- a.- Certificado de Origen, otorgado por las autoridades co-
rrespondientes (original y tres copias).
- b.- Conocimiento de Embarque, fuese completo, limpio o por
de (tres originales y cinco copias) Charter Parties
Acceptable.
- c.- Factura Consular (original y copias).
- d.- Factura Comercial (original y copias).
- e.- Certificado de Calidad, otorgado por Inspectores auto-
rizados del Ministerio de Agricultura de los Estados -
Unidos.
- f.- Certificado de Peso, otorgado por una entidad oficial
de los Estados Unidos.
- g.- Certificado de Inspección y ganchos (Hoovil Certificado)
otorgado por : El Elevador a la Carga.
- h.- Certificado Fito-Sanitario otorgado por el Departamen-
to de Agricultura de los Estados Unidos.
- i.- Certificado de Fumigación del Elevador con fecha no me-
yor de la fecha de embarque.



109 a

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CAHUIDE 805 90. PISO TELEFONO 71-1064 (LIMA-5)

CLÁUSULA CUARTA:- El VENDEDOR garantiza una velocidad de embarque de 4,000 T.M. por día WORKING, contados desde el momento del atracado de la nave.

CLÁUSULA QUINTA:- Son por cuenta del Comprador:

- a.- El Seguro Marítimo para el transporte de la mercancía.
- b.- Los gastos bancarios de esta operación.

Son por cuenta del VENDEDOR:

- a.- Los Gastos Consulares
- b.- Los Gastos de Inspección

CLÁUSULA SEXTA:- En el caso de que el COMPRADOR no cumpla con la fecha de embarque, pagará los gastos de almacenamiento a razón de US\$0.05 por T.M. por día, más los intereses correspondientes, salvo el caso de que este incumplimiento sea responsabilidad del VENDEDOR.

CLÁUSULA SÉPTIMA:- La oferta de venta también forma parte del presente Contrato.

CLÁUSULA OCTAVA:- Las partes señalan como domicilio:

110 a

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CAHUIDE 805 90. PISO TELEFONO 71-1664 (LIMA 5)

EL VENDEDOR en:

Jr. Conant 851, Lima Perú

EL COMPRADOR en:

Jr. Cahuide 805, Piso 7, Jesús María;

y se suscriben a los Jueces de Lima, Perú renunciando a cualquier otro que pudiera favorecerlos. Asimismo, hacen constar de expresa a cualquier intervención o reclamación diplomática.

Suscrito en Lima a los días del mes de de 1974.

Por E.P.A.A.

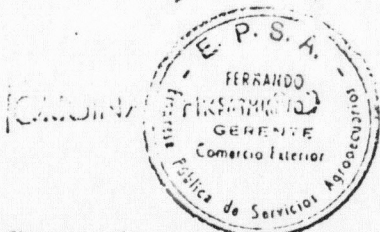
Por SARCO S.A.



Representantes de CONTINENTAL
CASH EXPORT CORPORATION

Ing. Manuel Fier Cano
Director Ejecutivo

Dr. Willem Eernst L.
C. E. Nº 2706
L. T. Nº 2406306



Fernando Ferrando Moray
Gerente de Comercio Exterior
Importación.

ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORT'S MOTION

111a

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CAHUIDE 805 Vta. PISO TELEFONO 71-1064 (LIMA-5)

CONTRATO Nº 009-74-DIG.

CONTRATO DE COMPRA-VENTA DE 35,000 T.M. 5% MAS O MENOS DE
TRIGO NORTHERN/DARK NORTHERN SPRING Nº 2 O MEJOR, 14% PRO -
TEINA MINIMO, QUE CELEBRAN LA EMPRESA PUBLICA DE SERVICIOS
AGROPECUARIOS - EPSA - Y LA FIRMA CONTINENTAL GRAIN EXPORT
CORPORATION.-

Conste por el presente documento el Contrato de Compra-Venta que celebran en su calidad de VENDEDOR la firma CONTINENTAL GRAIN EXPORT CORP., representada por la firma BARCO S.A. con L.T.Nº 9081704 y con domicilio en Camaná 851, Lima, y en su calidad de COMPRADOR, la EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS con L.T.Nº 9947221, representada por su Director Ejecutivo, Ing. Manuel Díaz Cano con L.E.Nº 5614153 y L.T.Nº -- 6268112, y su Gerente de Importación Sr. Fernando Sarmiento Morey, con L.E.Nº 2304471 y L.T.Nº 0518913, de acuerdo a los siguientes términos:

CLAUSULA PRIMERA:- Por el presente Contrato, la firma CONTINENTAL GRAIN EXPORT CORP. vende y el COMPRADOR adquiere hasta 35,000 T.M. 5% más o menos de Trigo Northern/Dark Northern Spring Nº 2 ó mejor, 14% proteína mínimo según calidad y peso final definitivo al embarque, de acuerdo a los certificados otorgados por Inspectores autorizados del Ministerio de Agricultura de los Estados Unidos de Norteamérica.

/...2

112 a

EMPRESA PUBLICA DE SERVICIOS AEROPORTUARIOS
CALLE 100 No. 150 TELEFONO 21 1054 (URUGUAY)

Contrato Nº 002-74-DIG.

- 2 -

CLAUSULA SEGUNDA:- El precio estipulado es de US\$ 219.00 -
FOB por T.M. al final del tubo de des -
carga en un puerto U.S.A. Golfo sin estibar y sin arrimar.

CLAUSULA TERCERA:- El VENDEDOR se obliga a tener lista pa -
ra embarcar la mercadería en el mes de
Marzo de 1974.

CLAUSULA CUARTA:- El pago se realizará mediante Carta de
Crédito irrevocable y confirmada, nego -
ciable y transferible abierto en un Banco de Primera clase
en los Estados Unidos de Norteamérica y pagadera a la vista
contra la presentación de los siguientes documentos de em -
barque:

- a) Certificado de Origen, otorgado por las Autoridades co -
rrespondientes (1 original y 3 copias).
- b) Conocimiento de embarque, juego completo, limpio a bordo
(3 originales y 5 copias) charter parties Bill of Lading
acceptable.
- c) Factura Consular (originales y 5 copias).
- d) Factura Comercial (originales y 5 copias).
- e) Certificado de calidad otorgado por Inspectores autoriza -
dos del Ministerio de Agricultura de los Estados Unidos.
- f) Certificado de Peso otorgado por entidad oficial en los
Estados Unidos.
- g) Certificado Fito-Sanitario otorgado por USA Departamento
de Agricultura.

/..3

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EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
CALLEIDE 805 90. P.O. TELEFONO 71-1534 (LIMA 2)

Contrato Nº 009-74-DIG.

- 3 -

CLAUSULA QUINTA:- El VENDEDOR garantiza una velocidad de embarque de 4,000 T.M. por día laborable (WDSHIX) en cuanto el buque esté atracado al muelle de carga.

CLAUSULA SEXTA:- Son de cuenta del COMPRADOR:

- a) El Seguro Marítimo para el transporte de la mercadería.
- b) Los gastos bancarios de esta operación.

Son de cuenta del VENDEDOR:

- a) Los Gastos Consulares.
- b) Los gastos ocasionados por el concurso de precios que han dado origen al presente Contrato.

CLAUSULA SEPTIMA:- En el caso de que el COMPRADOR no cumpla con la fecha de embarque, pagará los gastos de almacenaje a razón de US\$ 0.05 por T.M. y por día, más los intereses, salvo el caso de que este incumplimiento sea por responsabilidad del VENDEDOR.

CLAUSULA OCTAVA:- La oferta de venta también forma parte del presente Contrato.

CLAUSULA NOVENA:- Las partes señalan como domicilio:

El VENDEDOR en:

Jr. Camaná 851, Lima

El COMPRADOR en:

114a

EMPRESA PUBLICA DE PRODUCTOS AGROPECUARIOS
CAROLINA DE LOS RIOS 11773 - LIMA PERU

Contrato Nº 009-74-DIG.

- 4 -

El COMPRADOR en:

Jr. Cahuide 805, Piso 7, Jesús María y se someten a los Jueces de Lima-Perú, renunciando a cualquier otro que pudiera favorecerles. Asimismo, hacen renuncia expresa a cualquier intervención o reclamación diplomática.

El presente Contrato, 009-74-DIG, es suscrito con la firma -
CONTINENTAL GRAIN EXPORT CORPORATION, a los 21 días del mes de
Enero de 1974.

POR EPSA

Ino. Manuel Díaz Cano
Director Ejecutivo

Fernando Sarmiento M.
Gerente Comercio Exterior
Importación

POR CONTINENTAL GRAIN EXPORT
CORPORATION

Sr. William Barnett Williams
C.E. Nº 2703
L.T. Nº 2466805

ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORT'S MOTION

115 a

INTERWORLD TRANSLATION SERVICES, INC.

EMPIRE STATE BUILDING
350 FIFTH AVENUE
NEW YORK, N. Y. 10001 U.S.A.

TELEPHONE
(DAY AND NIGHT)
(212) 694-8218

PROFESSIONAL TRANSLATORS AND INTERPRETERS

CABLE
INTKONIG

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS
Cahui de no. 805, 9th floor
Lima 5
Peru

Contract #009-74-DIG

SALES/PURCHASE CONTRACT OF 35,000 METRIC TONS, 5% MORE OR LESS OF NORTHERN/DARK NORTHERN SPRING #2 WHEAT OR BETTER, MINIMUM 14% PROTEIN, ENTERED INTO BY THE EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS (EPSA) AND THE MESSRS CONTINENTAL GRAIN EXPORT CORPORATION.

The present document hereby puts on record a sales/purchase contract entered into by the Messrs CONTINENTAL GRAIN EXPORT CORPORATION, in its capacity of VENDOR, as represented by the Messrs. BARCO S.A., with trading license no. 9081704 and legal domicile at no. 851, Camaná, Lima, herein represented by Mr. William Barnet Williams, bearer of Identity Card number 2786 and Trading License no. 2466805 and THE EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS, in its capacity of BUYER with Trading License number 9947221, represented here by its Executive Director Engineer Manual Díaz Cana, bearer of Identity Card number 5614153 and Trading License no. 6268112 and its Import Manager, Mr. Fernando Sarmiento, bearer of Identity Document number 2804471 and Trading License number 0518913, in accordance with the following conditions:

CLAUSE NUMBER ONE. By this contract, the Messrs CONTINENTAL GRAIN EXPORT CORPORATION sells and the BUYER acquires up to 35,000 metric tons of Northern/Dark Northern Spring #2 wheat, 5% more or less or better, minimum of 14% protein, according to the final quality and weight at the time of shipment, in accordance with the certificates issued by the inspectors, so authorized by the Ministry of Agriculture of the United States of America.

CLAUSE NUMBER TWO. The stipulated price is US \$219.00 per metric ton, FOB at the end of the unloading tube in a US Gulf Port without loading or stowing.

MEMBERS

ASSOCIATION

EXHIBIT G

116 a
INTERWORLD TRANSLATION SERVICES, INC.

EMPIRE STATE BUILDING
350 FIFTH AVENUE
NEW YORK, N. Y. 10001 U.S.A.

TELEPHONE
(DAY AND NIGHT)
(212) 564-6218

Page 2.

PROFESSIONAL TRANSLATORS AND INTERPRETERS

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CLAUSE NUMBER THREE. The Vendor hereby obligates himself to have the merchandise ready for loading during the month of March 1974.

CLAUSE NUMBER FOUR. Payment will be made by irrevocable and confirmed letter of credit, negotiable, transferrable, opened in a first class bank in the United States of America and payable at sight against presentation of the following shipping document:

- a) Certificate of Origin, issued by the pertinent Authorities (1 original and three copies).
- b) Ocean Bill of Lading, complete set, clean on board (3 originals and 5 copies), charter parties Bill of Lading acceptable.
- c) Consular invoice (originals and 5 copies).
- d) Commercial invoice (originals and 5 copies).
- e) Certificate of Quality, issued by the Inspectors so authorized by the Ministry of Agriculture of the United States.
- f) Weight Certificate issued by the Official Entity of the United States.
- g) Phytosanitary certificate issued by the US Department of Agriculture.

CLAUSE NUMBER FIVE. The Vendor guarantees a shipping (sic-loading?) speed of 4,000 metric tons per working day (WWDSHEX) while the vessel is alongside the loading pier.

CLAUSE NUMBER SIX. The following are for the account of the BUYER:

- a) Maritime insurance for the transportation of the merchandise.
- b) Banking expenses of this transaction.

The following are for the account of the VENDOR:

- a) The Consular costs.
- b) The expenses caused by the competitive bidding which was the origin of this

ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORT'S MOTION

117 a

INTERWORLD TRANSLATION SERVICES, INC.

EMPIRE STATE BUILDING
350 FIFTH AVENUE
NEW YORK, N. Y. 10001 U.S.A.

TELEPHONE
(DAY AND NIGHT)
(212) 694-8218

Page 3.

PROFESSIONAL TRANSLATORS AND INTERPRETERS

CABLE
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contract.

CLAUSE NUMBER SEVEN. Should the buyer not comply with (executing this contract at the time of) the shipping date, then he will pay the warehousing charges amounting to US \$0.05 per metric ton per day, plus the interests, except where such lack of implementation would be the responsibility of the Vendor.

CLAUSE NUMBER EIGHT. The sales offer also is a part of the present contract.

CLAUSE NUMBER NINE. The parties state that their legal domiciles are:

The Vendor: at no. 851, Jirón Camaná, Lima

The Buyer: Jr. Cahuida, 7th floor, Jesus Maria

and that they submit themselves to the jurisdiction of the Courts of Lima (Peru) renouncing from any other which they might favor. Also, they expressly renounce from any diplomatic intervention or claim.

The present contract number 009-74-DIG is signed with the signature (of the) Firm of CONTINENTAL GRAIN EXPORT CORPORATION, in Lima on the twenty-first of month of January 1974.

for EPSA

For CONTINENTAL GRAIN EXPORT CORP.

Signature illegible
Ing. Manuel Díaz Cana
Executive Director

Signature illegible
William Barnett Williams
Identity Card number 2786
Trading License number 2466805

Signature illegible

(ORIGINAL SIGNED)

Fernando Sarmiento M. (a round seal/stamp with
Manager, Foreign Trade the legend:
(and) Import EPSA - Empresa Publica de Productos
Agropecuarios- Fernando Sarmiento,
Manager Foreign Trade)

Translated on January 19, 1976.

ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORT'S MOTION

CABLES
CEMOSO
LIMA - PERU

BARCO S. A.
EDIFICIO EL SOL 1502
CAMANA 851
LIMA, 1 - PERU

TEL. 230319-24-2176
CASILLA 584
TELEX: 20022 PU - 25250 PU

Lima, 9 de Julio de 1975.

Señores
EMPRESA PUBLICA DE COMERCIALIZACION
DE HARINA Y ACEITE DE PESCADO,
(" E. P. C. H. A. P. "),
Presente

Muy señores nuestros :

En representación de los señores Continental Grain
Export Corporation, New York, tenemos el agrado de hacerles llegar la si-
guiente oferta :

Hasta 75,000 T.M., 5% más o menos, al precio contratado de Trigo Hard
Winter N° 2 ó mejor, mínimo 11% de proteína:

- A) Hasta 17,000 T.M., 5% más o menos, embarque Julio 20/Agosto 10
US\$143.18 por T.M., FOB, un puerto del Golfo, sin es-
tibar y sin trimar.
- B) Hasta 23,000 T.M., 5% más o menos, embarque Agosto 20/Setiem-
bre 20,
US\$140.22 por T.M., FOB, un puerto del Golfo, sin
estibar y sin trimar.
- C) Hasta 26,500 T.M., 5% más o menos, embarque Agosto 20/ Se-
tiembre 20,
US\$142.07 por T.M., FOB, un puerto del Golfo, sin
estibar y sin trimar.
- D) Hasta 23,000 T.M., 5% más o menos, embarque Setiembre 20/Oc-
tubre 20,
US\$143.65 por T.M., FOB, un puerto del Golfo, sin
estibar y sin trimar.
- E) Hasta 23,000 T.M., 5% más o menos, embarque Setiembre 20/Oc-
tubre 20,
US\$143.65 por T.M., FOB, un puerto del Golfo, sin
estibar y sin trimar.

Las ofertas arriba señaladas excluyen los puertos de Brownsville y
Myrtle Grove.

- F) Hasta 40,000 T.M., 5% más o menos, embarque Julio 20, hasta
Setiembre 20,
US\$137.37 por T.M., FOB, Long Beach, California,
ó a opción del los Vendedores, San Francisco Bay, in-
cluyendo Stockton, California, sin estibar y sin tri-
mar.

ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORT'S MOTION

BARCO S. A.

119a

CABLES
CEMOSO
LIMA - PERU

EDIFICIO EL SOL 1502
CAMANA 851
LIMA, 1 - PERU

TEL. 23 0319 - 24-2176
CASILLA 584
TELEX: 20022 PU - 25250 PU

-2-

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CONDICIONES DE PAGO: Mediante Carta de Crédito, irrevocable y confirmada de acuerdo a las condiciones GSM-4 de la CCC, sujeto a la aprobación de la U.S.D.A. N° 13080.

OTRAS CONDICIONES: El peso, condición y calidad son finales al embarque según conocimientos de embarque, y todas las demás condiciones serán de acuerdo al Contrato NAEGA N° 2.

- En caso de que el Comprador no pueda embarcar durante el período contratado, los gastos de almacenaje son por cuenta del Comprador y será US\$0.10 T.M. por día incluyendo intereses.

- El Vendedor garantiza embarcar a la velocidad promedio; de 4,000 T.M. por día hábil WYDSHEX desde el momento que la nave atracará al muelle y es declarada apta para la carga.

- Los gastos Consulares usuales son por cuenta del Vendedor.

- El Vendedor requiere 10 días de pre-aviso antes de la llegada de la nave al puerto de carguío, además que la Carta de Crédito sea establecida antes del carguío de la nave.

NOTA: En caso que el Comprador requiera garantía de carga de 4,000 T.M. por día WYDSHEX, WIPON, WIBON, WIFPON, los precios arriba señalados se aumentarán en US\$3.00 por tonelada métrica. Demurrage/Despatch según C/P pero máximo US\$5,000/US\$3,000.

Esta oferta tiene validez hasta las 10:00 a.m., hora de Lima, del día Jueves 10 de Julio de 1975.

Quedamos a la espera de sus gratas órdenes, reiterándonos de Uds.

Attos. y Ss. Ss.
BARCO S. A.
Julio C. Chacka
Julio C. Chacka

*Package deducible de factura
Comercial*

120 a

ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORT'S MOTION

Lima, 14 de Agosto de 1975.

Señores
EMPRESA PUBLICA DE COMERCIALIZACION
DE HARINA Y ACEITE DE PESCADO,
(" E.P.C.H.A.P. "),
Presente

Muy señores nuestros :

En representación de los señores Continental Grain
Export Corporation, New York, nos es grato hacerles llegar la siguiente
oferta :

24,000 T. M. 5% más o menos, al precio contratado de Maíz Norteameri-
cano N° 3 Yellow Corn, máximo 15% de humedad.

P R E C I O : US\$140.05 tonelada métrica, F.O.B., sin estibar, sin tri-
mar, un puerto del Golfo de EE.UU., excluyendo Brownsville
y Myrtle Grove.

ALTERNATIVAMENTE

US\$139.65 tonelada métrica, F.O.B., sin estibar, sin tri-
mar, un puerto de la Costa Este de los EE.UU., USNH, ex-
cluyendo Albany.

ADICIONALMENTE:

24,000 T. M. 5% más o menos, al precio contratado, de Sorgo Amarillo
Norteamericano N° 2 Yellow Sorghum, máximo 14% humedad.

P R E C I O : US\$134.50 tonelada métrica, F.O.B., sin estibar, sin tri-
mar, un puerto de Texas, EE.UU., excluyendo Brownsville.

EMBARQUE : Ambas ofertas, Setiembre 15/ Octubre 15, 1975 con un pre-
aviso de 10 días de la llegada de la nave.

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OTRAS CONDICIONES :

- El peso, condición y calidad son finales al embarque según conocimiento/s de embarque, y todas las demás condiciones serán de acuerdo al Contrato NAEGA N°2.
- En caso que el Comprador no pueda embarcar durante el período de contrato, los gastos de almacenaje son por cuenta del Comprador y serán US\$0.03 por T.M. por día, incluyendo intereses.
- El Vendedor embarcará a una velocidad promedio de 4,000 TM, por día hábil WWDSHEX, WIPON, WBON, WIFON. El tiempo será calculado desde que la nave haya pasado la inspección y haya sido declarada apta para cargar. Demurrage: Despatch de acuerdo al Charter-Party, pero no excederá US\$5,000:3,000.
- Gastos Consulares usuales por cuenta del Vendedor.
- Fumigación con antigüedad no mayor de 15 días de la fecha del conocimiento de embarque por cuenta del Vendedor.

Quedamos a la espera siempre, de sus gratas órdenes repitiéndonos de Uds.

Attos. y Ss. Ss.
B A R C O S.A.

Julio C. Chackal

ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORT'S MOTION

CABLES
CEMOSO
LIMA - PERU

122a
BARCO S. A.

EDIFICIO EL SOL 1502
CAMANA 851
LIMA - PERU

TEL. 23-0319-24-2176
CASILLA 584
TELEX - 3540022

Lima, 28 de Agosto de 1974.

Señores
EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS,
(" E. P. S. A. "),
Presente

Muy señores nuestros :

En representación de los señores Continental Grain
Export Corporation, tenemos el agrado de hacerles la siguiente oferta :

Hasta 125,000 T. M. 5% más o menos, opción del Comprador, al precio
contratado de N° 3 Yellow Corn, con humedad máxi-
ma 15% .

EMBARQUE : 26,000 T.M., Setiembre de 1974, con un pre-aviso de
10 días de la llegada del buque.

PRECIO : US\$.144.61 T.M., FOB, un puerto del Golfo, sin es-
tibar, sin trimar.

EMBARQUE : 49,000 T.M., Octubre de 1974, con un pre-aviso de
15 días de la llegada del buque.

PRECIO : US\$.145.20 T.M., FOB, un puerto del Golfo, sin es-
tibar, sin trimar.

EMBARQUE : 50,000 T.M., Noviembre de 1974, con un pre-aviso de
15 días de la llegada del buque.

PRECIO : US\$.145.00 T.M., FOB, un puerto del Golfo, sin es-
tibar, sin trimar.

CONDICIONES DE PAGO: Mediante una Carta de Crédito, irrevocable y con-
firmada.

OTRAS CONDICIONES :

-
La cantidad, condición y calidad son finales al embarque,
según los conocimientos de embarque, y todas las demás
condiciones serán de acuerdo al Contrato NAEGA N° 2.

CABLES
CEMOSO
LIMA - PERU

123a
BARCO S. A.

EDIFICIO EL SOL 1502
CAMANA 851
LIMA - PERU

TEL. 23-0319 - 24-2176
CASILLA 584
TELEX - 3540022

- 2 -

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- En caso de que EPSA, no pueda embarcar durante el período contratado, los gastos de almacenaje son por cuenta de EPSA, y serán de US\$0.10 T.M. por día por los primeros 10 días más los intereses correspondientes, y US\$0.14 por los siguientes días más los intereses correspondientes.

- El Vendedor garantiza embarcar a la velocidad de : - 4,000 T.M. por día hábil (WWDSHEX) desde el momento que la nave atracará al muelle y es declarada apta para la carga.

- Gastos Consulares: por cuenta del Vendedor.

- Fumigación: con antigüedad no mayor de 15 días de la fecha del embarque, por cuenta del Vendedor.

ALTERNATIVAMENTE:

A ser declarado a la aceptación se ofrecen las mismas cantidades y posiciones bajo condiciones de pago y otras condiciones idénticas a lo anterior pero con embarque a efectuarse de un puerto del Atlántico:

PRECIO: Embarque Setiembre - US\$.144.21 T.M., FOB, un puerto del Atlántico, sin estibar, sin trimar.

Embarque Octubre - US\$.144.40 T.M., FOB, un puerto del Atlántico, sin estibar, sin trimar.

Embarque Noviembre - US\$.145.80 T.M., FOB, un puerto del Atlántico, sin estibar, sin trimar.

Estas ofertas tienen validez, hasta las 9:00 a.m., hora de Lima, del día Jueves 29 de Agosto de 1974.

Quedamos como siempre a la espera de sus gratas órdenes, repitiéndonos de Uds.

Attos. y Ss. Ss.
BARCO S. A.


Julio C. Chackal N.

ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORT'S MOTION

BARCO S. A. 124a

CABLES
CEMOSO
LIMA - PERU

EDIFICIO EL SOL 1502
CAMANA 851
LIMA - PERU

TEL. 23-0319 - 24-2176
CASILLA 584
TELEX - 3540022

Lima, 3 de Julio de 1974.

Señores
EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS,
("E. P. S. A."),
Jr. Cahuide 805,
JESUS MARIA

Muy señores nuestros :

En representación de los señores Continental Grain
Export Corporation, tenemos el agrado de hacerles la siguiente oferta :

26,000 T. M. 5% más o menos, opción del Comprador, al precio contratado
de N° 3 Yellow Corn, con humedad máxima 15.5% .

EMBARQUE: Las 26,000 T.M. de N° 3 Yellow Corn, están listas para el em-
barque sin la necesidad de pre-aviso de la llegada del buque y
se puede comenzar a cargar el día 5 de Julio de 1974. Si no -
fuera posible la llegada del buque el día 5 de Julio, les hacemos
notar que el buque puede atracar hasta el día 8 de Julio, 1974
para un carguío rápido, después de esa fecha no serán respon-
sables por cualquier demora.

PRECIO: U.S.\$ 131.02 por tonelada métrica, F.O.B. Philadelphia, -
sin estibar y sin trimar.

PAGO: Mediante Carta de Crédito, irrevocable y confirmada, abierta
inmediatamente a favor de los Vendedores.

OTRAS CONDICIONES:

- La cantidad, condición y calidad son finales al embarque, se-
gún los conocimientos de embarque, y todas las demás condi-
ciones serán de acuerdo al Contrato NAECA N° 2 .
- En caso de que EPSA, no pueda embarcar durante el período
contratado, los gastos de almacenaje son por cuenta de EPSA,
y serían de U.S.\$0.06 T.M. por día, más los intereses corres-
pondientes.

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ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORT'S MOTION

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-2-

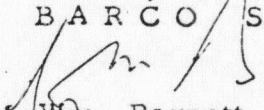
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- El Vendedor no garantiza, pero solamente para su gobierno, en el puerto de Philadelphia es usual cargar un buque B/C. de más o menos 26,000 T.M. dentro de 3 días, siempre y cuando el tiempo lo permita.
- Gastos Consulares, por cuenta del Vendedor.
- Certificado de los elevadores, no mayor de 15 días de la fecha de embarque, que el N° 3 Yellow Corn ha sido tratado con - Malathion.

Esta oferta tiene validez, hasta las 6:45 p.m., hora de Lima, del día de hoy Miércoles 3 de Julio de 1974. Lamentamos no poder extender esta validez, en vista de que el día de mañana es feriado en los Estados Unidos de Norteamérica.

Quedamos siempre, a la espera de sus gratas órdenes, repitiéndonos de Uds.

Attos. y Ss. Ss.
BARCO S. A.


Wm. Barnett

ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORT'S MOTION

BARCO S. A. 126 a

CABLES
CEMOSO
LIMA - PERU

EDIFICIO EL SOL 1502
CAMANA 851
LIMA - PERU

TEL. 23-0319 - 24-2176
CASILLA 564
TELEX - 3540022

Lima, 15 de Mayo de 1974.

Señores

EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS.

("E.P.S.A."),

Jr. Cahuide 805,

JESUS MARIA

Muy señores nuestros :

En representación de los señores Continental Grain - Export Corporation, de New York, tenemos el agrado de hacerles la siguiente oferta :

Hasta 103,000 T.M. 5% más o menos opción del Comprador, al precio contratado de N° 2 ó mejor Hard Winter Wheat, mínimo 11.50% proteína.

EMBARQUE: 24,000 T.M., Octubre 15/15 Noviembre de 1974.

PRECIO : US\$. 154.15 T.M., FOB, un puerto del Golfo, USA, sin estibar y sin trimar.

EMBARQUE : 16,500 T.M., Octubre de 1974.

PRECIO : US\$. 153.85 T.M., FOB, un puerto del Golfo, USA, sin estibar y sin trimar.

EMBARQUE : 16,500 T.M., Noviembre de 1974.

24,500 T.M., Noviembre de 1974.

PRECIO : US\$. 154.50 T.M., FOB, un puerto del Golfo, USA, sin estibar y sin trimar, para cualquiera de los dos embarques.

EMBARQUE : 21,500 T.M., Diciembre de 1974.

PRECIO : US\$. 155.35 T.M., FOB, un puerto del Golfo, USA, sin estibar y sin trimar.

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CABLES
CEMOSO
LIMA - PERU

BARCO S. A.

EDIFICIO EL SOL 1502
CAMANA 851
LIMA - PERU

127 a

TEL. 23 0319 - 24-2176
CASILLA 584
TELEX - 3540022

-2-

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PAGO I

Mediante Carta de Crédito, irrevocable y confirmada de acuerdo a , y sujeto a la Licencia de GSM-4 de la CCC.

OTRAS CONDICIONES :

- La cantidad y calidad de acuerdo a los grados oficiales del U.S.D.A. son finales al embarque, según los conocimientos de embarque, y todas las demás condiciones serán de acuerdo al Contrato NAEGA N° 2.

- En caso de que EPSA no pueda embarcar durante el período contratado los gastos de almacenaje son por cuenta de EPSA, y serán de U.S. \$.0.05 por tonelada métrica por día, más los intereses correspondientes.

- El Vendedor garantiza embarcar a la velocidad de 4,000 T.M. por día hábil (WWDSHEX) desde el momento que la nave atraca al muelles y es declarada apta para recibir la carga.

- Gastos Consulares por cuenta del Vendedor.

- El Comprador dará un mínimo de 15 días de pre-aviso de la llegada de las naves al puerto de carguío.

Estas ofertas tienen validez hasta las 9:15 a.m. hora de Lima, del día Jueves 16 de Mayo de 1974.

Esperando sus gratas órdenes, nos reiteramos de Uds.

Attos. y Ss. Ss.
BARCO S. A.

Julio C. Chackal

128 a

INTERWORLD TRANSLATION SERVICES, INC.

EMPIRE STATE BUILDING

350 FIFTH AVENUE

NEW YORK, N. Y. 10001 U.S.A.

TELEPHONE
(DAY AND NIGHT)
(212) 594-8218

PROFESSIONAL TRANSLATORS AND INTERPRETERS

CABLE
INTKOENIG

BARCO S.A.
El Sol Building 1502
Camana no. 851
Lima
Peru

Lima July 3rd 1974

The Messrs
Empresa Publica de Servicios Agropecuarios
(EPSA)
Jr. Cahuide no. 805
Jesus Maria

Gentlemen:

As representatives of the Messrs Continental Grain Export Corporation, we take pleasure in making the following offer to you:

26,000 (metric tons - translator) 5% more or less, at the option of the buyer, at the contracted price, of no. 3 Yellow Corn, with a maximum humidity of 15,5%.

Shipment: the 26,000 metric ton are ready for shipment with any need for prior advice of the departure of the vessel and can start being loaded on the 5th of July 1974. If departure of the vessel cannot occur on July 5th, we would like to inform you that the vessel can bring alongside until July 8th 1974 for a quick loading. After that date we will not be responsible for any demurrage whatsoever.

Price: US \$131.02 per metric ton, FOB Philadelphia, without loading or stowing.

Payment: By irrevocable and confirmed letter of credit, immediately opened in favor of the sellers.

Other conditions:

The quantity, conditions and quality are definitive ones, at the time of shipment,

ALBERT SLABOTZKY'S AFFIDAVIT IN SUPPORT OF EXPORT'S MOTION

129 a

INTERWORLD TRANSLATION SERVICES, INC.

EMPIRE STATE BUILDING
350 FIFTH AVENUE
NEW YORK, N. Y. 10001 U.S.A.

TELEPHONE
(DAY AND NIGHT)
(212) 694-8218

Page 2.

PROFESSIONAL TRANSLATORS AND INTERPRETERS

CABLE
INTKOEINIG

according to the ocean bill of lading and all of the other conditions will be in accordance with the NAEGA contract number 2.

In case EPSA would not be able to ship during the contracted period, then the warehouses charges will be for the account of EPSA, which charges amount to US \$0.06 per metric ton per day plus the pertinent interests.

- The Vendor will not guarantee the following, however for your information, it is usual in the port of Philadelphia to load a freighter of more or less 26,000 metric tons within 3 days, always if time so permits.

- Consular costs are for the account of the Vendor.

- Certificate from the (grain) elevators not more than 15 days after the date of shipment, that the no. 3 Yellow Corn was treated with Malathion.

This offer remains valid until 6,45 p.m., Lima time, of this day Wednesday the third of July 1974. We regret not to be able to prolong this validity, in view of the fact that tomorrow is a holiday in the United States of America.

Awaiting your kind notices, we remain, as always,

Yours very truly

BARCO S. A.

Signature

Wm. Barnett

Translated on January 15, 1976.



U 91464668

United States District Court
Southern District of New York

Empresa Pública de Comercialización
de Harina y Aceite de Pescado and
Empresa Pública de Servicios
Agropecuarios,

Index No.
75 Civ. 4511 (RO)

Plaintiffs,

- Against-

S.S. Yukon Mart, her engines,
boilers, etc., Bergen Shipping Co.
Ltd. Breda Shipping Co., Ltd. Continental
Grain Company and Continental Grain
Export Corporation.

Affidavit

Defendants.

Orlando Fosca Galdos, with Electoral Book
Nº2918101, being duly sworn, deposes and says:

1.- I am the Executive President of Empresa Pública de Comercialización de Harina y Aceite de Pescado (EPCHAP), a plaintiff in the above entitled action, and I make this affidavit in opposition to defendant Continental Grain Export Corporation's motion to dismiss the complaint or in the alternative, to stay the proceedings pending arbitration.

2.- Empresa Pública de Comercialización de Harina y Aceite de Pescado, is a public Corporation, incorporated under and by virtue of the laws of the republic of Perú with a principal office and place of business at Av. 28 de Julio 715, Lima 1, Perú and my duties include the supervision of legal matters on behalf of EPCHAP.

3.- EPCHAP has never arbitrated a dispute concerning corn or grain damage with Continental Grain Export Corporation or any other party, either at Perú or elsewhere.

ORLANDO FOSCA GALDOS

CERTI.////

131 a

ORLANDO FOSCA GALDOS' AFFIDAVIT IN OPPOSITION TO EXPORT
MOTION ON BEHALF OF PLAINTIFFS

...///FICO:La firma de la vuelta del señor Orlando Fosca Galdos,
peruano, identificado con L. Electoral N° 2918101, L. Militar N°
176517 y L. tributaria N° 0313114, que he tenido a la vista
y cuya firma legalizo.-

Lima, 19 de Febrero de 1976.

DP/.



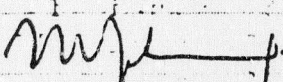
Republic of Peru
Province and City of Lima
Embassy of the
United States of America

I, Leon M. Johnson, Jr.,
of the United States of America at Lima, Peru, duly commissioned
and qualified, do hereby certify that

RAFAEL CHEPOTE COQUIS,

whose true signature and official seal appear on this document
was, on February 19, 1976, a Peruvian
Notary Public in the city of Lima,
country of Peru, in whose official acts faith and credit are due.
For the contents of the annexed document the Embassy assumes
no responsibility.

IN WITNESS WHEREOF, I have hereunto set my hand and official
seal this 20th day of February 1976, A. D.


LEON M. JOHNSON, Jr.
American Consul

ERNESTO VELARDE SANTA MARIA'S AFFIDAVIT IN OPPOSITION TO
EXPORT MOTION ON BEHALF OF PLAINTIFFS



97717615

United States District Court
Southern District Of New York

Empresa Pública de Comercialización
de Harina y Aceite de Pescado and -
Empresa Pública de Servicios Agrope-
cuarios,

Index No.
75 Civ. 4511 (RO)

Plaintiffs,

- Against -

S.S. Yukon Mart, her engines,
boilers, etc., Bergen Shipping Co.
Std., Breda Shipping Co., Ltd. Con-
tinental Grain Company and Continen-
tal Grain Export Corporation.

Affidavit

Defendants.

Ernesto Velarde Santa María, with Electo -
ral Book, Income Tax Card, and Military Card Nos. 2774690,-
2944731 and 48376 respectively, being duly sworn deposes and
says:

1. Y am the Director Manager of Empresa -
Pública de Servicios Agropecuarios, (EPSA) a plaintiff in the
above entitled action, and I make this affidavit in opposi-
tion to defendant. Continental Grain Export Corporation's mo-
tion to dismiss the complaint or, in the alternative, to -
stay the proceedings pending arbitration.

2. Empresa Pública de Servicios Agropecua-
rios (EPSA, is a public corporation, incorporated under and-
by virtue of the laws of the republic of Perú, with a prin-
cipal office and place of business at Jr. Cahuide 805 - 9° -
piso - Jesús María, Lima, Perú, its Director Manager or Exe-
cutive Manager drafts and reviews contracts for the purchase
of corn and grains on behalf of EPSA.

3. All sales/purchase contracts between -
EPSA and Continental Grain Export Corporation including that
dated July 3, 1974 and addendum dated July 8, 1974, are inten-
ded by the parties to be subject to the jurisdiction of the
courts of Lima, Perú. The seller and buyer expressly waived-
any other jurisdiction which may favour them and also waived
any intervention or claim of a diplomatic nature.

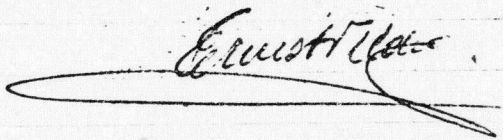
/..

ERNESTO VELARDE SANTA MARIA'S AFFIDAVIT IN OPPOSITION TO
EXPORT MOTION ON BEHALF OF PLAINTIFFS

1.

4. The utilization of arbitration anywhere -
in the world to settle disputes which might arise under the -
aforesaid contract was not considered by the parties to the -
aforesaid contract.

5. Many similar contracts of sales/purchase-
have been entered into by EPSA with Continental Grain Export -
Corporation and in no instance has arbitration been employed,
either at Perú or else where, to settle disputes between EPSA
and Continental Grain Export Corporation.


Ernesto Velarde Santa María

CERTIFICO: la autenticidad de la firma de don Ernesto Velarde Santa María,
Director- Gerente de la Empresa Pública de Servicios Agropecuarios, identi-
ficado con L.E.N°2774690 i L.T.N°2944731, la que legalizo en Lima, a 19 de
febrero de 1976.-

NOTARIA PUBLICA
Dr. ERNESTO VELARDE ARENAS

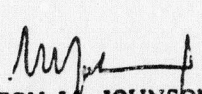

ERNESTO VELARDE ARENAS
NOTARIO PUBLICO

Republic of Peru
Province and City of Lima
Embassy of the

United States of America
I, Leon M. Johnson, Jr., Consul
of the United States of America, at Lima, Peru, duly commissioned
and qualified, do hereby certify that:

ERNESTO VELARDE ARENAS,
whose true signature and official seal appear on this document
was, on February 19, 1976, a Peruvian
Notary Public in the city of Lima,
country of Peru, to whose official acts faith and credit are due.
For the contents of the annexed document the Embassy assumes
no responsibility.

IN WITNESS WHEREOF, I have hereunto set my hand and official
seal this 19th day of February 1976, A. D.


LEON M. JOHNSON, Jr.
American Consul

ERNESTO VELARDE SANTA MARIA'S AFFIDAVIT IN OPPOSITION TO
EXPORT MOTION ON BEHALF OF PLAINTIFFS



97717618

United States District Court
Southern District of New York

Empresa Pública de Comerciali-
zación de Harina y Aceite de-
Pescado and Empresa Pública -
de Servicios Agropecuarios.

Plaintiffs,

Index N°
75 Civ. 4511 (RO)

- Against -

S.S. Yukon Mart, her engines-
boilers, etc, Bergen Shipping
Co. Ltd., Breda Shipping Co.,
Ltd. Continental Grain Compa-
ny and Continental Grain Ex-
port Corporation.

Affidavit

Defendants.

Ernesto Velarde Santa María, con Libretas -
Electoral, Tributaria y Militar Nos. 2774690, 2944731 y ---
48376, respectivamente, declaro bajo juramento lo siguiente:

1. Yo, soy Director Gerente de la Empresa -
Pública de Servicios Agropecuarios, EPSA, demandante en la-
acción arriba mencionada y hago esta Declaración Jurada, im-
pugnando la moción del demandado, Continental Grain Corpora-
tion, para dejar de lado la queja o en la alternativa, de-
jar estos procedimientos pendientes del arbitraje.

2. La Empresa Pública de Servicios Agrope-
cuarios, EPSA, es una empresa pública, creada al amparo de-
las leyes de la República del Perú, con Oficina Principal y
domicilio legal en Cahuide N° 805, 9° Piso - Jesús María -
Lima, Perú, siendo labores propias del puesto de Director -
Gerente o Director Ejecutivo la de dictar las pautas para -
la reclamación de los contratos y proceder a su revisión fi-
nal en lo referente a las compras de maíz y granos, en re-
presentación de EPSA.

3. En todos los contratos de compra-venta -
entre EPSA y Continental Grain Export Corporation incluyen-
do aquel fechado el 3 de Julio de 1974 y su adicional fecha-
da el 8 de Julio de 1974, las partes se sometieron a la ju-
risdicción de los Jueces de Lima-Perú, renunciando expresa-
mente a cualquier otra jurisdicción que pudiera favorecer-
los y también renunciaron a cualquier intervención o recla-
mo de naturaleza diplomática.

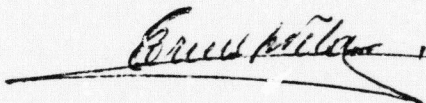
4. La utilización del arbitraje en cualquier
lugar del mundo para resolver controversias que pudieran --
surgir en la ejecución del Contrato mencionado no fue con-

/...

ERNESTO VELARDE SANTA MARIA'S AFFIDAVIT IN OPPOSITON TO
EXPORT MOTION ON BEHALF OF PLAINTIFFS

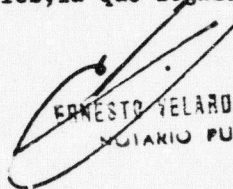
siderado por las partes en este Contrato.

5. Muchos contratos de compra-venta similares - han sido celebrados por EPSA con Continental Grain Export -- Corporation y en ningún caso se ha utilizado el arbitraje, - bien en el Perú o en otra parte para arreglar controversias- entre EPSA y Continental Grain Export Corporation.



ING. ERNESTO VELARDE SANTA MARIA

CERTIFICO: la autenticidad de la firma de don Ernesto Velarde Santa María, identificado con L.E.N°2774690 i L.T.N°2944731, Director-Gerente de la Empresa Pública de Servicios Agropecuarios, la que legalizo en Lima, a 19 de febrero de 1976.-

ERNESTO VELARDE ARENAS
NOTARIO PUBLICO

Republic of Peru
Province and City of Lima
Embassy of the
United States of America

I, Leon M. Johnson, Jr.,

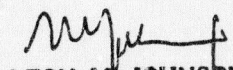
Consul

of the United States of America at Lima, Peru, duly commissioned and qualified, do hereby certify that:

ERNESTO VELARDE ARENAS;

whose true signature and official seal appear on this document was, on February 19, 1976, a Peruvian Notary Public in the city of Lima, country of Peru, to whose official acts faith and credit are due. For the contents of the annexed document the Embassy assumes no responsibility.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 19th day of February 1976, A. D.



LEON M. JOHNSON, Jr.
American Consul

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x

EMPRESA PUBLICA DE COMERCIALIZA- :
CION DE HARINA Y ACEITE DE :
PESCADO and EMPRESA PUBLICA DE :
SERVICIOS AGROPECUARIOS, :

Plaintiffs, :

-against- :

AFFIDAVIT

75 Civ. 4511 (RO)

S.S. YUKON MART, her engines, :
boilers, etc.; BERGEN SHIPPING :
CO. LTD.; BREDA SHIPPING CO. :
LTD.; CONTINENTAL GRAIN COMPANY :
and CONTINENTAL GRAIN EXPORT :
CORPORATION, :

Defendants. :

----- -x

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

J. EDWIN CAREY, Being duly sworn, deposes and says:

I am an attorney and a member of the firm of Hill,
Rivkins, Carey, Ioesberg & O'Brien, attorneys for defendant,
Continental Grain Export Corporation, and as such am fully
familiar with all of the pleadings and proceedings heretofore
had herein.

I make this affidavit in response to the affidavits
of Orlando Fosca Galdos and Ernesto Velarde Santa Maria,
which were served upon your deponent's office on
February 24, 1976.

Referring to the affidavit of Mr. Velarde Santa
Maria, I would respectfully direct the Court's attention to
the legal authorities cited in plaintiff's reply papers,
which clearly support the proposition that the intent of the

J. EDWIN CAREY'S AFFIDAVIT IN SUPPORT OF EXPORT'S
MOTION

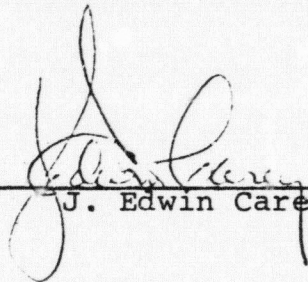
parties to a contract is a matter to be determined by the words of the contract and not by a unilateral interpretation placed upon such wording by plaintiffs' officers. Therefore, your deponent respectfully requests that this Court reject the affidavit of Mr. Velarde Santa Maria in its entirety as being totally irrelevant, immaterial and contrary to the law governing the interpretation of contracts.

At the same time your deponent wishes to point out to the Court that the very contract which Mr. Velarde Santa Maria seeks to explain is one drafted and prepared by plaintiffs. It would be contrary to legal precedents to permit plaintiffs to introduce a unilateral intention not expressed by the contract.

Both Mr. Velarde Santa Maria and Mr. Orlando Fosca Galdos state that neither EPSA nor EPCHAP have arbitrated a dispute with Continental Grain Export Corporation concerning damage to corn or grain; defendant "Export" has not alleged that they had. Your deponent refers the Court to the statement in the affidavit of Mr. Slabotsky in which "Export" merely states that EPSA, in its capacity as a sophisticated purchaser of corn and grain products, is very familiar with the GAFTA No. 30 arbitration provisions. Mr. Slabotsky states that insofar as he is reliably informed EPSA was recently involved in an arbitration under GAFTA No. 30 in London. There is no reference nor is any reference intended that this arbitration was with Continental Grain Company and/or Continental

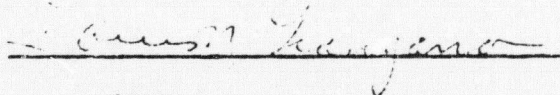
138 a

Grain Export Corporation. In fact, neither your deponent nor Mr. Slabotsky knows with whom that arbitration was held but this does not detract from the issue raised, to wit -- EPCHAP is familiar with provisions for arbitration as contained in grain purchase contracts presently before the Court.



J. Edwin Carey

Sworn to before me this
25th day of February, 1976.



LOUIS N. GIANGARRA
Notary Public, State of New York
No. 24-4525960 Qual. in Kings County
Cert. Filed in New York County
Commission Expires March 30, 1976

138 a-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
EMPRESA PUBLICA DE COMERCIALIZACION :
DE HARINA Y ACEITE DE PESCADO and :
EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS, :

Plaintiffs, :

-against- :

S.S. YUKON MART, her engines, boilers, :
etc.; BERGEN SHIPPING CO. LTD.; BREDA :
SHIPPING CO. LTD.; CONTINENTAL GRAIN :
COMPANY and CONTINENTAL GRAIN EXPORT :
CORPORATION, :

Defendants. :

75 Civ. 3951A
MEMORANDUM AND ORDER

45061

-----X
OWEN, District Judge

Defendants Continental Grain Export Corp. ("Export") and Continental Grain Co. ("Grain") separately move for orders staying proceedings and trial as to each of them pending arbitration.

Defendant Export claims the sales contract between plaintiff EPSCA and Export, in Addendum No. 1, incorporates Grain and Feed Trade Association ("GAFTA") No. 30 "for other conditions not specified in our contract" This incorporation by reference of GAFTA No. 30, which contains an arbitration clause, shows sufficient intent to incorporate the arbitration provisions, Lowry & Co., Inc. v. S.S. Le Moyne D'Ilberville, 253 F. Supp. 396 (S.D.N.Y. 1966); Wilson v.

Exponent Cake & Meal Co., 77 F. Supp. 364 (D. Neb. 1948).

Plaintiff, however, argues that the seventh clause of the sales contract controls. This clause provides that the parties:

submit themselves to the judges of Lima, Peru, waiving any other [jurisdiction] which may favor them. Likewise they waive any intervention of claim of diplomatic nature.¹

However, this forum selection clause, as an exclusion-from-arbitration clause, is vague. Cf. Carpenters District Council v. Brady Corp., 513 F.2d 1 (10th Cir. 1975). It may have been intended to refer only to judicial proceedings (jurisdiction) which was not seen as the exclusive remedy. In any case, plaintiffs themselves, by their conduct, seem not to have regarded this as a forum selection clause for they ignored it and instituted suit here in the United States.

Defendant Grain urges that the Bill of Lading likewise provides for arbitration through the incorporation of the "Centrocon" form of charter party and urges further that the three months statute of limitations provided therein applies. Plaintiffs claim that such arbitration clause, with this three month statute of limitations, is void. The United States Carriage of Goods by Sea Act of 1936 (COGSA), 46 U.S.C. §§ 1300 et seq., which all parties agree applies, allows one

¹ English translation as provided by plaintiffs.

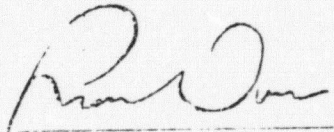
138 a-3

year in which to bring suit and further provides that provisions which lessen liability as provided for in COGSA are null and void. However, COGSA is not violated by a three month arbitration statute of limitations, and such arbitration provisions are enforceable. Hurt & Chan Co., Inc. v. S/S Clymenia, 318 F. Supp. 1387 (S.D.N.Y. 1970); Lowry & Co., Inc. v. S.S. Le Moyne D'Iberville, 253 F.Supp. 396 (S.D.N.Y. 1965).

For the foregoing reasons, defendants' motion for a stay of proceedings and trial as to each of them pending arbitration is granted. The interposition of any defense of statute of limitations is to be heard by the arbitrators.

So Ordered.

September 8, 1976.


United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
EMPRESA PUBLICA DE COMERCIALIZACION
DE HARINA Y ACEITE DE PESCADO, and
EMPRESA PUBLICA DE SERVICIOS
AGROPECUARIOS,

Index No.
75 Civ. 4511 (RO)

Plaintiffs,

-against-

M/V YUKON MART, her engines, boilers,
etc., BERGEN SHIPPING CO., LTD.,
BREDAS SHIPPING CO., LTD., CONTINENTAL
GRAIN COMPANY and CONTINENTAL GRAIN
EXPORT CORPORATION,

NOTICE OF
APPEAL

Defendants.

-----x

Notice is hereby given that the plaintiffs, EMPRESA PUBLICA DE COMERCIALIZACION DE HARINA Y ACEITE DE PESCADO, and EMPRESA PUBLICA DE SERVICIOS AGROPECUARIOS hereby appeal to the United States Court of Appeals for the Second Circuit from the Memorandum and Order number 45061 of the Honorable Richard Owen dated September 8, 1976 which granted the motions of defendants CONTINENTAL GRAIN COMPANY and CONTINENTAL GRAIN EXPORT CORPORATION for a stay of proceedings and trial as to each of them pending arbitration.

Dated: New York, New York
October 8, 1976

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NOTICE OF APPEAL

DONOVAN, MALOOF, WALSH & KENNEDY

By: /s/ David L. Maloof
DAVID L. MALOOF

Attorneys for above-named plaintiffs
Office and P.O. Address
161 William Street
New York, New York 10038

TO:

CLERK
United States District Court
Southern District of New York

SYMMERS, FISH & WINTER
Attorneys for Defendant
Continental Grain Company
345 Park Avenue
New York, New York 10022

HILL, RIVKINS, CAREY, LOESEBERG & O'BRIEN
Attorneys for Defendant
Continental Grain Export Corporation
96 Fulton Street
New York, New York 10038

KIRLIN, CAMPBELL & KEATING
Attorneys for Defendants
Bergen Shipping Co., Ltd.
Breda Shipping Co., Ltd.
120 Broadway
New York, New York 10005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
EMPRESA PUBLICA DE COMERCIALIZACION
DE HARINA Y ACEITE DE PESCADO and
EMPRESA PUBLICA DE SERVICIOS
AGROPECUARIOS,

Index No.
75 Civ. 4511 (RO)

Plaintiffs,

-against-

MOTION FOR
REARGUMENT

S.S. YUKON MARCO, her engines, boilers,
etc., BERGEN SHIPPING CO., LTD., BREDA
SHIPPING CO., LTD., CONTINENTAL GRAIN
COMPANY and CONTINENTAL GRAIN EXPORT
CORPORATION,

Defendants.
-----x

Plaintiffs move this Honorable Court for permission to reargue in opposition to the motions made by defendants, Continental Grain Company and Continental Grain Export Corporation for the reason that plaintiffs have a firm conviction that this Court in its opinion #45081, dated September 8, 1976, has not met the issues which were presented to the Court by the plaintiffs.

THE MOTION OF CONTINENTAL
GRAIN EXPORT CORPORATION

Your Honor has held that by instituting suit in the Southern District of New York, plaintiffs have disregarded and, therefore, presumably waived the jurisdiction clause in the Contract of Sale. Whether or not this be so, this was not the issue before the Court. The only issue was whether plaintiffs had agreed with Continental Grain Export Corporation to arbitrate their dispute in London. The Court had only to look at the contract and not any party's subsequent conduct in order to determine that the alleged arbitration agreement referred only to "other conditions not specified in our contract".

PLAINTIFFS' MOTION OF REARGUMENT

The forum selection clause in the contract is not vague. As written, it refers to a lawsuit in Peru which is clearly contradictory to arbitration in London and therefore, come under "...other conditions...".

In this regard, we call the Court's attention to the provision in the Contract of Sale, Clause 6, which provides that Maritime insurance for the transportation of the merchandise is for the buyer's (EFSA) account. Since it was not provided that such insurance was for the risk of the buyer too, it might be argued that the seller was to procure such insurance and bill the buyer accordingly, particularly when GAF TA 30 stipulates that the seller shall purchase such insurance. However, the intent of the parties was to excise from the terms of GAF TA 30 those provisions which were included in or otherwise provided for by the Contract of Sale.

Clearly among the foregoing were jurisdiction, quality and maritime insurance. Arbitration was never agreed upon by the parties to the Contract of Sale, and that mode of adjustment of disputes cannot, by operation of law, be imposed upon the parties to the Contract of Sale. Continental Grain Export Corporation's motion should therefore, be denied.

THE MOTION OF CONTINENTAL
GRAIN COMPANY

Your Honor further held that the Carriage of Goods by Sea Act is not violated by a three month arbitration period of limitations and for that proposition has cited two cases of this Court. Kurt Orban Co., Inc. v. S. S. Clymenia, 318 F. Supp. 1387 (S. D. N. Y. 1970) and Lowry & Co., Inc. v. S. S. Lemoyne D'Herbville, 263 F. Supp. 396 (S. D. N. Y. 1966). But, these cases again do not touch the issue which was presented to the Court. The sole issue in this matter, was: where the Carriage of Goods by Sea Act applies by law, may a carrier enforce a provision which lessens its liability

PLAINTIFFS' MOTION OF REARGUMENT

to the cargo owner with clearly prejudicial conditions. Both of the above cases involve charter parties and private carriage where the charter parties were the contract of carriage, but not the documents of title. Therefore, the Carriage of Goods by Sea Act applied, not by law, but by agreement. Judges Weinfeld and Penney properly held that where that is the case, simple rules of contract will govern and that it is entirely likely that the parties intended a three month time to arbitrate, rather than a one year time to sue, to control.

Where, however, the Carriage of Goods by Sea Act applies by operation of law, rules of contractual interpretation fall in deference to the will of Congress. Congress has given cargo owners one year to institute suit. The carrier, according to the Carriage of Goods by Sea Act itself, may not enforce a provision which limits the cargo owner to a shorter period of time and which, therefore, is clearly a lessening of liability and, as a result, is clearly prejudicial and violative of the Carriage of Goods by Sea Act.

The arbitration clause in question violated and prejudiced cargo's rights under the Carriage of Goods by Sea Act in other ways as well. Arbitrators are not bound by the letter of the law or the facts and they may decide the case in any way (for chary practical purposes) that they see fit. There is no right to appeal except for bias and there is no guarantee in the first place as to how three commercial men in London would interpret an American statute.

The Supreme Court of the United States in M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1., 10, 326 Ed. 2d 513, 520, refers with favor to the Second Circuit Decision in Indussa Corp. v. S.S. Ranborg, 377 F. 2d

PLAINTIFFS' MOTION OF REARGUMENT

200 (CA 2d 1967), as follows:

"... The Miller case was overruled in Indussa Corp. v. S. S. Ranborg, 377 F. 2d 200 (CA 2d 1967), insofar as it held that the forum clause was not inconsistent with the "lessening of liability" provisions of the Carriage of Goods by Sea Act, 46 U.S.C. §1903 (8), which were applicable to the transactions in Miller, Indussa and Carbon Black..." (footnote 11, p. 10).

You will note that the Supreme Court explicitly makes the point that the Carriage of Goods by Sea Act does not apply in the M/S Bremen v. Zapata Off-Shore Co. with the clear implication that if it did, its decision in that case would have been just the opposite.

Even if the Carriage of Goods by Sea Act applied in this case by contract rather than law (which is not the situation), the bill of lading itself states that any provision repugnant to the Carriage of Goods by Sea Act will be void. A three month time to appoint arbitrators, the failure of which completely extinguishes plaintiffs' cause of action, is repugnant to a one year time for suit. The Court should keep in mind that whether or not the three month provision is reasonable is not the issue. The issue is whether the clause is repugnant to the Carriage of Goods by Sea Act. Plaintiffs not only suggest but insist that it is repugnant, and, therefore, must fall for that reason.

Your Honor will find attached hereto a newspaper article which refers to alleged corruption on the part of United States Government Grain Inspectors at the Port of Philadelphia and the continuing Federal Grand Jury probe into the activities at the two Philadelphia grain elevators, Port

PLAINTIFFS' MOTION OF REARGUMENT

Richmond and Girard Point, the latter being owned by Tidewater Grain, Inc., Continental's agent in the shipment of the commodity in this case. The investigation centers on allegations of gifts of money or other valuables to public employees, namely Federal grain inspectors, in order to influence them in passing grain of lesser quality than was called for in export contracts similar to the one in this case. Plaintiffs claim that the quality of the corn they received in Peru was of a lesser quality than they had bargained for but the certificates issued by government inspectors at Philadelphia say that it was of the quality bargained for. Plaintiffs fully intend to make complete discovery and inspection under the Federal Rules of Civil Procedure at Philadelphia in order to ascertain whether or not the certificates in this case were obtained through criminal bribery and unlawful corruption.

However, as Your Honor well knows, the rules of discovery and inspection under the Federal Rules of Civil Procedure do not apply in arbitration. So again, the alleged arbitration agreement in the bill of lading violates the Carriage of Goods by Sea Act and prejudices plaintiffs' right thereunder in this respect.

For the foregoing reasons, plaintiffs request this Court to review its opinion dated September 8, 1976 and to deny the motions made by Continental Grain Company and Continental Grain Export Corporation, with costs and counsel fees to the plaintiffs.

Dated: New York, New York
September 17, 1976

DONOVAN, MALOOF, WALSH & KENNEDY

By: /s/ David L. Maloof
DAVID L. MALOOF

A Member of the Firm
Attorneys for Plaintiffs
161 William Street
New York, New York 10038

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 75 Civ. 4511 (RO)

EMPRESA PUBLICA DE COMERCIALIZACION
DE HARINA Y ACEITA DE PESCADO and
EMPRESA PUBLICA DE SERVICIOS
AGROPECUARIOS.

Plaintiffs,

-against-

SYNCON MAR T, her engines, boilers, etc.,
BERGEN SHIPPING CO., LTD., BREDA
SHIPPING CO., LTD., CONTINENTAL GRAIN
COMPANY and CONTINENTAL GRAIN EXPORT
CORPORATION,

Defendants.

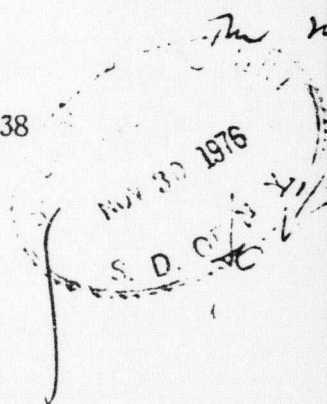
NOTICE OF MOTION
FOR REARGUMENT

MALCOLM WALSH & KENNEDY

Attorneys for Plaintiffs

161 William Street
Borough of Manhattan
City of New York, N. Y. 10038
Tel. No.: 964-3553

MEMORANDUM



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SYMMERS, FISH & WARNER

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KIRBY, CAMERON & NEA

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SEP 16 1976

HILL, RYKINS, CAREY, LOESJEG & O'BRIEN

NOTICE OF MOTION FOR REARGUMENT

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And

*motion to reargue is denied
by order of*

4/76

[Signature]
SAS

MICROFILM

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SERVICE OF ^{one} ~~THREE~~ (3) COPIES OF THE WRIT
IS HEREBY ADMITTED

THIS 4th DAY OF April 1977

George F. Dalton
KCK for Bergen - Breda Shipping

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SYMMERS, FISH & WARNER
By Harry S. Calkins
APR 4 12 43 PM '77
Adley for Continental
Bran Company

1977
Hon. Mr. Mangano
MILL, RYAN, COOK, LUESBERG & O'NEILL
mg Clerk